

Re-Direct/Det. Harvin/Ms. Channapati

799

1 Q If you could just take a look?

2 A (Pausing). It is a closed complaint.

3 Q What does it mean when it is a closed complaint?

4 A Either the allegation was unfounded or there was  
5 no -- or there was an arrest made and the case is closed.

6 Q Now, does it indicate there was an arrest made in the  
7 Nitro check?

8 A It did not have any arrests.

9 Q Was it just a closed complaint?

10 A Yes.

11 Q Now, would there be any reason why you would have to  
12 go and do an investigation on a closed complaint for  
13 prostitution?

14 A No.

15 MR. GREENBERG: Objection.

16 THE COURT: Overruled. The answer was no.

17 Q Now, the statement that the defendant made, he said  
18 that he frequented Russian Massage parlors?

19 A Yes, he did.

20 MR. GREENBERG: Objection to the form of the  
21 question.

22 THE COURT: Overruled.

23 Q I am directing your attention to the statement that  
24 the defendant made to you.

25 Do you remember defense attorney asking you the

DAR

Re-Cross/Det. Harvin/Mr. Greenberg

800

1 question that the defendant said that he frequents Russian  
2 massage parlors?

3 A Yes, I do.

4 Q Is that the only thing that the defendant said to you  
5 that day?

6 A No, it's not.

7 Q What else did he say?

8 A In regard to Russian massage parlors?

9 Q No. I am talking about the entire statement?

10 A Okay.

11 He told me he did not know the complainant. He  
12 didn't know anyone that lived at that location. He frequented  
13 Russian massage parlors and sometimes he meets the females  
14 for --

15 MR. GREENBERG: Objection.

16 THE COURT: Sustained.

17 MS. CHANNAPATI: Thank you very much.

18 Nothing further.

19 THE COURT: Anything from defense further.

20 MR. GREENBERG: Yes, your Honor, one moment.

21 RE-CROSS EXAMINATION

22 BY MR. GREENBERG:

23 Q Just drawing your attention to 901 Avenue H.

24 Once you went to the apartment for the second time  
25 that day, did you ever discover who lived in that apartment?

DAR

1 A I was informed by the super the first time of the  
2 name of the tenant that resided at the apartment.

3 Q And isn't it true that that super told you that the  
4 tenant had sublet the apartment?

5 A Yes.

6 Q And that there were people who were living in that  
7 apartment that were not the tenant?

8 A Yes.

9 Q And did you ever discover who those people were?

10 A No.

11 Q Did you ever discover what those people were using  
12 that apartment for?

13 A No.

14 Q But you did discover that they spoke Russian  
15 language; is that correct?

16 A Yes.

17 Q And that was the last phone call that came into Mr.  
18 Krioutchkova's apartment prior to the incident; is that  
19 correct?

20 A Yes.

21 Q You didn't investigate into the complaint, the  
22 prostitution complaint, did you?

23 A No, I did not.

24 Q You didn't discover anything about what that --you  
25 didn't discover anything with respect to that complaint, did

Re-Cross/Det. Harvin/Mr. Greenberg

802

1 you?

2 A No, I didn't.

3 Q Did you ever discover the name of the person who the  
4 complaint was about?

5 A No.

6 MR. GREENBERG: No further questions.

7 THE COURT: People.

8 MS. CHANNAPATI: One moment, your Honor.

9 (Pausing).

10 MS. CHANNAPATI: Nothing your Honor.

11 THE COURT: Nothing further. The witness may  
12 step down.

13 (Witness exits the courtroom.)

14 THE COURT: Would the attorneys approach.

15 (Whereupon, a bench conference took place  
16 between counsel and the Court.)

17 THE COURT: People, you have a witness.

18 MS. CHANNAPATI: Yes, your Honor.

19 The People call Alice Olosunde.

20 THE COURT OFFICER: Witness entering.

21 THE CLERK: Raise your right hand.

22 A L I C E O L O S U N D E, called as a witness,  
23 having been first duly sworn by the clerk of the court,  
24 was examined and testified as follows:

25 THE WITNESS: Yes.

DAR

Direct/A. Olosunde/Ms. Channapati

803

1 THE CLERK: Please be seated.

2 In a very loud clear voice, please state your  
3 full name and occupation.

4 THE WITNESS: My name is Alice Olosunde. I am a  
5 certified nurse mid-wife.

6 THE CLERK: Could you spell your last name?

7 THE WITNESS: O L O S U N D E.

8 THE COURT: People, you may proceed.

9 MS. CHANNAPATI: Thank you, your Honor.

10 DIRECT EXAMINATION

11 BY MS. CHANNAPATI:

12 Q Ms. Olosunde, what is your occupation?

13 A I'm a certified nurse mid-wife.

14 Q And where are you currently working?

15 A I'm working at Coney Island Hospital.

16 Q How long have you worked there?

17 A I've worked for there since 1994.

18 Q What is your current position there?

19 A Director of Mid-Wife Services.

20 Q And where did you work previously?

21 A Well, I began my career as a mid-wife from New  
22 Jersey, the University of Medicine and Dentistry where I  
23 worked as clinical staff and taught mid-wifery for five years.

24 Q And what years?

25 A From 1979 through '84.

Direct/A. Olosunde/Ms. Channapati

804

1 Q And after that where did you work?

2 A I worked at Columbia University UFCC Neighborhood  
3 Family Care Center/Wood haul Hospital as a certified nurse  
4 mid-wife also.

5 Q What are your duties and responsibilities?

6 A I examine --I provided women's health, which included  
7 gynecology and obstetrics, took care of them through  
8 pregnancy, delivered their babies at times.

9 Q After that where did you work?

10 A I went on to work at Coney Island Hospital from 1984  
11 through -- excuse me from 1988 through 1991.

12 Q And what was your responsibility? What was your  
13 position and responsibility?

14 A Certified nurse mid-wife also.

15 Q And what were your responsibilities?

16 A Provided woman's health care, OB-GYN, family planning  
17 care.

18 Q After that where did you work?

19 A I worked at St. Mary's Hospital and Interfaith Group  
20 which is part of the Catholic Medical Center.

21 Q What is your position?

22 A Staff mid-wife also/chief mid-wife.

23 Q And what was your responsibility there?

24 A Also providing woman's health care, which included  
25 OB-GYN, family planning.

Direct/A. Olosunde/Ms. Channapati

805

1 Q Okay.

2 And after that where did you work?

3 A I returned to Coney Island Hospital as Director of  
4 Mid-Wife Services.

5 Q What are your responsibilities as the Director of  
6 Mid-wife Services?

7 A My responsibilities included -- include at this point  
8 taking care of patients. I'm in the clinical situation as  
9 well as handling a bunch of mid-wives.

10 Q Are you responsible for supervising the mid-wives?

11 A Yes, I do.

12 Q Do you train them on occasion?

13 A Yes.

14 Q Now what schools did you attend?

15 A I had my Bachelor of Science Degree from the Long  
16 Island University Brooklyn campus 1972 through '76.

17 Q Okay.

18 A I attended Columbia University Teacher's College from  
19 '76 through '77. And then --

20 Q I am sorry.

21 Before you go on, what degree did you receive at  
22 Columbia?

23 A Master of Arts in teaching of nursing.

24 Q And what else?

25 A Then I went to Columbia University School of

Direct/A. Olosunde/Ms. Channapati

806

1 Mid-wifery where I received my Master of Science in  
2 Mid-wifery.

3 Q What year was that?

4 A 1979.

5 Q Now, where did you do your internship or your  
6 clinical integration program?

7 A Well, the integration program was at Downstate  
8 Medical Center.

9 Q Okay.

10 And after graduating with these degrees, did you take  
11 up further specialized training?

12 A Yes. As a certified nurse mid-wife I am expected to  
13 have continuing education credits, which I did. And then of  
14 course I received training for forensic examination.

15 Q And what do you mean forensic examination? What  
16 specifically did you receive training in?

17 A I received training in sexual assault forensic  
18 examination.

19 Q Now, are you licensed as a nurse practitioner in the  
20 state?

21 A Yes, I am.

22 Q When did you receive that license?

23 A I believe it was 1990.

24 Q Are you board certified?

25 A Yes, I am.

Direct/A. Olosunde/Ms. Channapati

807

1 Q When did you become board certified?

2 A 1979.

3 Q In what field?

4 A In mid-wifery.

5 Q Now, in the course of your professional career, have  
6 you ever had cause to treat patients whose chief complaint was  
7 rape?

8 A Yes.

9 Q And approximately how many patients?

10 A I would say about 20.

11 Q And when did you become -- when did you receive the  
12 specialized training for the sexual assault examination?

13 A 2002.

14 Q So you have seen-- the number that you just gave,  
15 approximately 20, is that since 2002?

16 A Yes.

17 Q Do you teach?

18 A Yes, I do teach.

19 Q Where did you teach?

20 A Right now I am teaching as clinical receptor within  
21 the hospital, teaching various mid-wife students, PA students,  
22 medical students.

23 Q And what topics do you teach?

24 A Clinical OBGYN, family planning, woman's health.

25 Q Now, you continued to take classes as continuing

1 education?

2 A Yes.

3 Q Do you do anything else to keep current in your  
4 field?

5 A Yes, I read medical journals, mid-wifery journals,  
6 medical journals.

7 Q Now, did you ever receive additional certification as  
8 a sexual assault forensic examiner?

9 A Yes, I am currently certified by the New York State  
10 Department of Health Sexual Assault Forensic Examiner.

11 MS. CHANNAPATI: One moment, your Honor.

12 (Pausing).

13 MS. CHANNAPATI: Your Honor, at this time, I  
14 would offer Alice Olosunde as an expert in the field of  
15 Nurse Mid-wifery and Sexual Assault Forensic Examination.

16 THE COURT: In the field of.

17 MS. CHANNAPATI: Nurse mid-wifery and Sexual  
18 Assault Forensic Examination.

19 THE COURT: Any objection?

20 MR. GREENBERG: Yes.

21 THE COURT: Come here.

22 (Whereupon, a conference took place outside the  
23 hearing of the jury.)

24 THE COURT: What's the objection.

25 MR. GREENBERG: The objection is, based upon the

1 fact that number one if she's going to testify about her  
2 opinion with respect to whether or not the complainant was  
3 raped, I don't think she's qualified to do that.

4 She's clearly a well-trained certified mid-wife  
5 and has certainly had a lot of experience doing that.

6 I don't believe there's been any testimony that  
7 she's been previously qualified to testify as an expert.

8 MS. CHANNAPATI: It is irrelevant.

9 MR. GREENBERG: Furthermore, there is -- she  
10 hasn't indicated any high degree of scholarship with  
11 regard to rape, rape victims. She is examined since 1992  
12 20 patients.

13 MS. CHANNAPATI: 2002.

14 MR. GREENBERG: 2002. This incident happened  
15 2003, which is one year after she started seeing those  
16 types of patients. I don't know how many patients she had  
17 seen at that point.

18 THE COURT: People.

19 MS. CHANNAPATI: Your Honor, I don't understand  
20 how a high degree of scholarship. The woman has two  
21 degrees from Columbia University which to everyone would  
22 indicate it is a higher degree.

23 Nonetheless, she has extensive nursing  
24 experience. She has more experience with woman's health  
25 and Gynecology and Obstetrics for over 25 years.

-Proceedings-

810

1 THE COURT: I am listening counsel.

2 MR. GREENBERG: Your Honor, she has certainly  
3 not specialized, certainly not a gynecologist and  
4 certainly not as someone who has specifically trained  
5 with, at least I have heard, trained with a gynecologist  
6 and specifically in the area of rape and sexual assault  
7 with respect to trauma. I didn't hear any of that.

8 I certainly heard from someone who has very  
9 general, general amount of experience.

10 It appears to me that she treated Ms.  
11 Krioutchkova and certainly she can testify about her  
12 treatment and what she observed.

13 But in rendering an opinion, I don't believe  
14 she's qualified to do so.

15 MS. CHANNAPATI: Your Honor, she is board  
16 certified. And if the State itself is finding she's  
17 certified to make such a determination, I don't think it  
18 is beyond the Court to find that same conclusion.

19 Just because she's a nurse she's not qualified;  
20 that is unheard of.

21 MR. GREENBERG: Certainly what I said she's  
22 clearly someone with experience, but in terms of rendering  
23 opinion as to whether or not she can say that there's been  
24 trauma as a result of a rape, I don't think the People  
25 have met and proved with qualification.

DAR

1 Direct/A. Olosunde/Ms. Channapati

811

1 THE COURT: The Court has listened to both  
2 sides. She will be qualified as an expert in the areas.

3 The Court has listened to both sides and the  
4 court rules that she will be qualified in both areas.

5 (The following is heard inside the presence and  
6 hearing of the jury.)

7 THE COURT: We have had our discussion, the  
8 objection is overruled. The witness is admitted as an  
9 expert in the field of nurse mid-wifery and sexual assault  
10 examination.

11 DIRECT EXAMINATION

12 BY MS. CHANNAPATI:

13 MS. CHANNAPATI: I am showing to the defense  
14 attorney what would be marked People's number 21, which is  
15 a 20 to 30 page document.

16 THE COURT: Say what?

17 MS. CHANNAPATI: It is a 22 page document. It  
18 is the medical records, your Honor.

19 (Handing.)

20 At this time, your Honor, we're asking that it  
21 be marked as People's number 22 for identification. And  
22 if it could be moved in pursuant to CPLR 45:18, these are  
23 the medical records for Vera Krioutchkova with the  
24 certification attached

25 THE COURT: Counsel.

Direct/A. Olosunde/Ms. Channapati

812

1 MR. GREENBERG: They are certified documents,  
2 your Honor.

3 THE COURT: I take it that is not an objection.

4 MR. GREENBERG: No.

5 THE COURT: Into evidence as People's Exhibit  
6 number 22.

7 (Whereupon, document is so marked People's  
8 Exhibit #22 in evidence.)

9 MS. CHANNAPATI: If she could be shown

10 THE COURT: They are being shown.

11 (Shown).

12 Q Ms. Olosunde, directing your attention now to  
13 March 26, 2003, were you working at Coney Island Hospital on  
14 that date?

15 A Yes.

16 Q Did you examine a patient by the name of Vera  
17 Krioutchkova?

18 A Yes.

19 Q And how did she appear to you at that time?

20 A She was weepy, crying hysterically, and she was  
21 really shaken.

22 Q Now, did you conduct a physical examination of her at  
23 that point?

24 A Yes.

25 Q And could you please explain to the jury how that was

Direct/A. Olosunde/Ms. Channapati

813

1 done?

2 A Well, my physical examination includes a complete  
3 visual examination looking at her from head to toe. And then  
4 of course palpating her various parts from head down to her  
5 toes. And it eventually included a pelvic examination.

6 Q Now, when you do a pelvic examination, what do you  
7 do?

8 A Well, I start with visualizing the external  
9 genitalia, what we call the outside of the female sexual  
10 organ. The female sexual organ from the outside to the  
11 inside. I then visualize the external genitalia. Then I use  
12 a speculum to go through the vagina to look at the internal  
13 genitalia.

14 Q Could you please explain what a speculum is?

15 A A speculum is a device.

16 Q And what does it do?

17 A It is a device that we use, it's shaped in such a way  
18 as to be able to go through, like a tunnel-like structure of  
19 the body and go into the vagina, open it up to look at the  
20 walls of the vagina from top to bottom, and then the back of  
21 the vagina and the mouth of the womb.

22 Q And so what was the result of that internal  
23 examination?

24 A Well, there was a bruise mark on the right side  
25 according to as I see in the notes. A bruise on the right of

DAR

Direct/A. Olosunde/Ms. Channapati

814

1 the patient's introitals, that is the entry introitals, the  
2 entry into the vagina. The entrance part of the vagina and  
3 the walls were intact, the cervix was not there.

4 MS. CHANNAPATI: Your Honor, at this time I am  
5 going to show defense counsel a poster containing a  
6 diagram which I would ask to be marked as People's number  
7 23 for identification.

8 THE COURT: People's number 23 marked for  
9 identification.

10 (Whereupon, item is so marked People's  
11 Exhibit #23 for identification.)

12 MS. CHANNAPATI: If it could be shown to the  
13 witness.

14 (Shown.)

15 THE COURT: It is being shown to the witness.

16 Q Ms. Olosunde, do you recognize that?

17 A Yes.

18 Q What is it?

19 A That is the external female, external genitalia.

20 Q Does it fairly and accurately depict what the female  
21 genitalia looks like?

22 A Yes, it does.

23 MS. CHANNAPATI: Your Honor, at this time I ask  
24 it be moved into evidence as People's 23.

25 THE COURT: Any objection.

1 Direct/A. Olosunde/Ms. Channapati

815

2 MR. GREENBERG: None.

3 THE COURT: Into evidence as People's number 23.

4 (Whereupon, item is so marked People's

5 Exhibit #23 in evidence.)

6 MS. CHANNAPATI: And could it be posted for the  
7 jury, your Honor.

8 THE COURT: Yes.

9 (Posted.)

10 Q And if the witness could approach and be given a red  
marker, your Honor?

11 THE COURT: All right. The witness is  
12 approaching the exhibit.

13 (Witness complies.)

14 Q Ms. Olosunde, if you could please indicate where you  
15 saw the bruise on Ms. Krioutchkova?

16 A Right there (indicating.)

17 THE COURT: The witness is marking a spot on the  
18 exhibit.

19 Q Okay.

20 And again, what area is that that you saw?

21 A The introital, the entry part into the vagina.

22 MS. CHANNAPATI: Thank you, very much. You  
23 could have a seat.

24 Q Now, in your expert opinion, to a reasonable degree  
25 of medical certainty, is that finding consistent with a

Direct/A. Olosunde/Ms. Channapati

816

1 complaint of forceable vaginal sexual intercourse?

2 A Yes.

3 Q Could you please explain the basis for that opinion?

4 A It is an abnormal finding. It is not usually there.

5 When I examine a patient I don't see a bruise mark.

6 Q Okay.

7 And is there any other indications as to why that is  
8 consistent with a forceable sexual -- forceable vaginal sexual  
9 intercourse?

10 A No. Could you repeat the question. I don't  
11 understand exactly.

12 Q You said that it is not -- it is an abnormal finding.

13 A It is abnormal finding.

14 Q Now, besides the fact it is an abnormal finding, is  
15 there anything about a bruise mark on the introital that would  
16 be consistent with a complaint of forceable vaginal sexual  
17 intercourse?

18 A There must have been an impact on that area for there  
19 to be a bruise mark there.

20 Q And would such an impact be consist with forceable  
21 vaginal sexual penetration?

22 A Yes.

23 Q Now, in connection with your examination and  
24 treatment of Vera Krioutchkova, did you consult with any other  
25 doctors?

Direct/A. Olosunde/Ms. Channapati

817

1 A Yes, I consulted with an attendant physician.

2 Q What did that doctor do?

3 A She saw the patient and corroborated my findings.

4 Q Now, did you order any tests for Vera Krioutchkova?

5 A Yes.

6 Q What tests did you order?

7 A I ordered a test for sexually transmitted diseases  
8 which included HIV, Hepatitis.

9 Q Did you recommend any follow-up visit?

10 A Yes.

11 Q And for what purpose?

12 A Well, we have to see that the bruise healed, we have  
13 to give a follow-up GYN care, paps smear, all of that.

14 Q Did you provide any other treatment for her?

15 A She was given post-exposure prophylactic. It is a  
16 medication we give for HIV prevention.

17 MS. CHANNAPATI: At this time if the witness  
18 could be shown People's number 9, the rape kit.

19 THE COURT: All right. The court officer is  
20 getting that.

21 (Shown)

22 Q Ms. Olosunde, do you recognize that?

23 A Yes, I do.

24 Q What do you recognize it to be?

25 A It is the package containing the evidence collection

Direct/A. Olosunde/Ms. Channapati

818

1 rape kit.

2 Q How do you recognize it?

3 A I have my handwriting there and the dates that I  
4 wrote.

5 Q Does it appear any differently now as you last saw it  
6 on March 26, 2003

7 A There are extra writings on it and extra tape that  
8 was not there.

9 Q Okay.

10 Now, could you explain to the jury what the rape kit  
11 is?

12 A It is a devise that we use to collect evidence.

13 Q Okay.

14 A Of sexual assault.

15 Q Did you prepare this rape kit on March 26, 2003?

16 A Yes.

17 Q For Vera Krioutchkova?

18 A Yes.

19 Q Could you please explain what you did to collect the  
20 samples?

21 A Follow the guidelines that is contained in the box,  
22 which include --

23 Q Would you need to open the box?

24 A Yes.

25 THE COURT: All right.

Direct/A. Olosunde/Ms. Channapati

819

1                   Then we will just get you some gloves.

2                   THE WITNESS: Okay. Thank you.

3                   (Handing.)

4                   THE WITNESS: Okay.

5                   Q     If you could explain to the jury what do you do?

6                   A     We follow the-- I follow the guidelines. It tells  
7     you step by step what steps to take, steps one, two, three,  
8     four, for certain things.

9                   Q     What are those steps?

10                  A     Well, some -- one of the steps is to pull patient's  
11    hair from the head.

12                  Q     Yes.

13                  A     From certain parts in the middle, the sides, the  
14    back.

15                  Q     Okay.

16                  A     Another step to take a sample from the oral part, the  
17    mouth.

18                  Q     How is that done?

19                  A     From the side of the gum we use a Q-Tip to collect  
20    samples from the patient's mouth and from the patient's gums.

21                  Q     Yes.

22                  A     There's a little structure that looks like a little  
23    comb. We scrape the patient's side of the mouth.

24                  Q     What else?

25                  A     That's for the mouth.

Direct/A. Olosunde/Ms. Channapati

820

1           Then we collect, we pull the pubic hair.

2           We take evidence from any secretions that we might  
3        see -- any secretions that I might see on the vaginal area.

4           We start from the top and get to the pelvic  
5        examination.

6           The pelvic examination includes smears from the  
7        outside, from the inside, from the anus.

8       Q    When you say "outside," outside of what?

9       A    Outside of the vagina.

10      Q    And when you say "inside," you mean?

11      A    The vagina itself. The inside of the vagina, the  
12       internal genitalia.

13      Q    Now, did Vera Krioutchkova indicate that she was  
14       anally penetrated by her attacker in any way?

15      A    No, she did not.

16      Q    Why then did you do and swab of Vera Krioutchkova?

17      A    For one thing, it is a requirement as part of the  
18       evidence collection kit. And also there is chances of semen  
19       or any liquid seeping from the vagina into the anal area.

20      Q    And in your expert opinion, is it not uncommon for  
21       semen to be found in the anal area even when a woman has not  
22       had anal sex?

23      A    Yes.

24      Q    It is not uncommon?

25      A    It is not uncommon even for ejaculation to take place

Re-Cross/A. Olosunde/Mr. Greenberg

821

1 outside of the depth of the vagina.

2 Q Now, after collecting all the samples for the kit,  
3 did you seal it?

4 A Yes, I did.

5 Q And how did you seal it?

6 A With a little tape provided in the kit itself.

7 Q After you sealed the kit, what did you do with it?

8 A It was handed over to NYPD Officer Esposito.

9 MS. CHANNAPATI: Thank you, very much.

10 THE COURT: All right. Now defense.

11 CROSS-EXAMINATION

12 BY MR. GREENBERG:

13 Q Good morning.

14 A Good morning.

15 Q You had indicated that you had received certification  
16 in sexual assault?

17 A Forensic examination.

18 Q Forensic examination?

19 A Yes.

20 Q And that certification is an education in how to  
21 collect semen and bodily fluids --I should say part of the  
22 certification and schooling is how to collect and preserve  
23 evidence; isn't that correct?

24 A Yes.

25 Q You got that certification in 2002, correct?

Re-Cross/A. Olosunde/Mr. Greenberg

822

1 A Yes.

2 Q And --

3 A I got the training in 2002, yes.

4 Q When did you get your certification?

5 A 2006.

6 Q 2006?

7 A Yes.

8 Q You did the examination of Ms. Vera Krioutchkova in  
9 2003; is that correct?

10 A Yes, right.

11 Q You also indicated that you discussed your findings  
12 with a doctor; is that correct?

13 A Yes.

14 Q And which doctor was that?

15 A Dr. Morat, Yasmin Morat.

16 Q When you say "your findings," you're saying that it  
17 was the fact that there was a one centimeter bruise?

18 A Yes.

19 Q And that's when you say "findings" that's what you  
20 are referring to, correct?

21 A Yes.

22 Q There were -- there was no trauma to the inside of  
23 Ms. Krioutchkova's vagina, correct?

24 A Yes.

25 Q There was no damage to the walls of her vagina,

DAR

Re-Direct/A. Olosunde/Ms. Channapati

823

1 correct?

2 A Yes.

3 Q And the one centimeter bruise is on the outside of  
4 the vagina, correct?

5 A Yes.

6 Q And you said that is a result of forceful  
7 penetration, correct?

8 A Yes.

9 Q And isn't it true that that could happen as a result  
10 of forceful and vigorous sex?

11 A I wouldn't -- perhaps, yes.

12 MR. GREENBERG: I have no further questions.

13 THE COURT: Any further re-direct?

14 MS. CHANNAPATI: Yes, re-direct examination.

15 RE-DIRECT EXAMINATION

16 BY MS. CHANNAPATI:

17 Q MS. Olosunde, what do you mean by trauma? When  
18 defense attorney asked that there was no trauma to Ms. Vera  
19 Krioutchkova in her vagina, what did you mean by trauma?

20 A Well, I should have asked him what he meant by trauma  
21 to start with.

22 My definition is my response is the fact that there  
23 was no injury in the internal genitalia. There was injury on  
24 the external genitalia.

25 Q All right.

Re-Direct/A. Olosunde/Ms. Channapati

824

1                   And that injury was the bruise?

2                   A    Is the bruise, yes.

3                   Q    And in your expert opinion -- expert opinion, in a  
4                   case where a woman says that she had forceable vaginal  
5                   intercourse --

6                   A    Right.

7                   Q    And has no visible injuries --

8                   A    Right.

9                   Q    -- is that lack of injuries still consistent with  
10                   forceable vaginal intercourse?

11                  A    Yes.

12                  MR. GREENBERG: I am going to object to the  
13                  question.

14                  THE COURT: Overruled.

15                  Q    I am sorry.

16                  A    Yes.

17                  Q    Is it possible to have forceable vaginal intercourse  
18                  and have no injuries?

19                  A    Yeah.

20                  Q    And why how is it possible?

21                  A    Well, it depends on the structures we're talking  
22                  about. It depends on the woman's vaginal elasticity, the give  
23                  and take. It depends on the man's-- the male organ, the size  
24                  and --

25                  Q    Does lubrication have anything to do with it?

Re-Cross/A. Olosunde/Mr. Greenberg

825

1 A Yes, absolutely.

2 Q Okay.

3 And have you seen that in your experience people who  
4 -- patients who have given you a history of being forcibly  
5 raped and having no injury?

6 A I have seen that, yes.

7 Q And so does the fact that Ms. Krioutchkova had  
8 vaginal injuries, does it make it more consistent or less  
9 consistent with it being forceable?

10 A More.

11 Q With forceable more?

12 A More consistent, yes.

13 MS. CHANNAPATI: Thank you.

14 THE COURT: Defense.

15 RE-CROSS-EXAMINATION

16 BY MR. GREENBERG:

17 Q Isn't it true, really what it is more consistent with  
18 is forceable entry?

19 A Say again.

20 Q Isn't it more consistent with forceable entry? It  
21 could be from a consensual sexual relationship?

22 A I wouldn't -- I wasn't there. But I wouldn't say  
23 that either.

24 Q You wouldn't say that. But you just said earlier  
25 that forceful vigorous sex would -- could potentially lead to

1 a bruise mark?

2 A Injury, yes.

3 Q And really the issue that you can't testify to is  
4 whether or not that was consensual or not; is that correct?

5 A You know, from experience, consensual sex would be--  
6 mean preparation for sex and the anticipation for sex.

7 Q Isn't it true that people have sex in all different  
8 kinds of way?

9 A I don't know. I can't answer that.

10 Q You can't answer what other people do with their  
11 sexual relationships?

12 A Yes, exactly.

13 MR. GREENBERG: Thank you. No further  
14 questions.

15 MS. CHANNAPATI: Thank you.

16 THE COURT: Thank you.

17 The witness may step down.

18 (Witness exits.)

19 THE COURT: Would the lawyers approach.

20 (Whereupon, a bench conference took place  
21 between counsel and the Court.)

22 THE COURT: People.

23 MS. CHANNAPATI: Your Honor, at this time the  
24 People rest.

25 THE COURT: All right.

1                   Ladies and Gentlemen, the People have rested and  
2                   it is getting towards lunch time. We will take our break  
3                   now.

4                   We will be back at our normal time, 2:15, and  
5                   then we'll continue.

6                   Please do not discuss the case and form no  
7                   opinions whatsoever regarding guilt or innocence.

8                   Please follow the officer out.

9                   (Whereupon, the jury exits the courtroom and the  
10                  following is heard outside the hearing and presence of the  
11                  jury.)

12                  THE COURT: The People have rested.

13                  The jury has left the room. We are about to be  
14                  on break for lunch. I am sure defense would have motions  
15                  and we'll deal with that at 2:15.

16                  MR. GREENBERG: All right.

17                  THE COURT: 2:15

18                  (Whereupon, a lunch recess was taken.)

19

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- Charge Conference -

828

1                   MR. GREENBERG: Judge, I'm going to make a  
2 motion. The People have failed to prove or bring forth any  
3 prima facie evidence, and I'm asking you to dismiss the  
4 case against Mr. Colon.

5                   THE COURT: People?

6                   MS. CHANNAPATI: Your Honor, the Court has  
7 heard the testimony. I think the People have made a prima  
8 facie case, and it should be presented to the jury to  
9 decide.

10                  THE COURT: All that is on the record, and the  
11 Court reserves decision regarding that motion.

12                  Anything else to discuss?

13                  MR. GREENBERG: No.

14                  THE COURT: Is the defense putting on a case?

15                  MR. GREENBERG: No.

16                  THE COURT: Well, let's now look at logistics.

17                  We can do a preliminary charge conference now.

18                  This is a preliminary discussion. The place  
19 the Court is looking at first is the indictment with regard  
20 to the charges. So we might as well go over that.

21                  In that indictment are seven counts. One  
22 Burglary in the First Degree, B, as in boy, violent felony,  
23 Penal Law 140 -- well, I've re-ordered these a little bit  
24 so when I say Count 1, it's possibly Count 1, but anyway,  
25 Penal Law 140 Sub 30, Sub 2. That burglary, in essence,

1 says the defendant entered and remained unlawfully and  
2 caused physical injury.

3 Then the second count, burglary in the second,  
4 Penal Law 140.3. That's also a B, as in boy, felony, and  
5 that says the defendant entered or remained unlawfully with  
6 the intent to commit a crime and used or threatened the use  
7 of a dangerous weapon, in this case, a knife.

8 Then, there's a charge of Rape in the First  
9 Degree. The felony in that charge alleges the defendant  
10 engaged in sexual intercourse -- and that's defined -- with  
11 the complainant by forcible compulsion.

12 Then there's two charges of Sex Abuse in the  
13 First Degree. That's a D, as in David, felony. Both are  
14 under Penal Law 130.65, Sub 1.

15 One of the charges alleges sexual contact,  
16 penis to vagina, by forcible compulsion. The other charge  
17 alleges sexual contact finger to vagina by forcible  
18 compulsion.

19 There's a charge of Assault in the Second  
20 Degree, D as in David, felony, and that requires that the  
21 defendant in the course or in the furtherance of a crime or  
22 in an attempt to commit a crime caused physical injury to  
23 the complainant.

24 Finally, there's a charge of Criminal  
25 Possession of a Weapon in the Fourth Degree, A Misdemeanor.

1           In that sense, it says the defendant knowingly and  
2           unlawfully possessed the weapon, namely, a knife, and I  
3           think it says with the intent to use it.

4           So, those are the charges. So the only  
5           question is: Is there anything that anyone suggests the  
6           Court would not charge out of those seven counts?

7           I'm not hearing a thing from the lawyers.

8           MR. GREENBERG: One minute.

9           Your Honor, with respect to the sixth count --

10          THE COURT: Assault?

11          MR. GREENBERG: Yes. The physical injury,  
12           statutorily, I don't believe the People have proved that  
13           the injury to the complainant, which I would presume is a  
14           bruise, is physical injury.

15          THE COURT: I'll hear from the People.

16          MR. CHANNAPATI: Your Honor, there's testimony  
17           from the witnesses that she felt extreme pain from the  
18           vagina, and there was a bruise there, accordingly, and I  
19           think the People have met their burden in at least  
20           establishing a prima facie case for physical injury with  
21           regard to that count, and it should be presented to the  
22           jury.

23          THE COURT: Right. That issue would come up  
24           as well with regard to the burglary count.

25          MR. GREENBERG: Correct.

THE COURT: It uses physical injury, and the Court believes -- either side can point me to a case, but the Court believes the cases would not support a finding by this Court that the People have, as a matter of law, not established an injury. Therefore, the Court believes that it goes to the jury.

Let me ask you all this: What about that charge of Sexual Abuse in the First Degree, penis to vagina? Isn't that covered under rape?

MR. CHANNAPATI: Your Honor, if the Court  
is -- I don't know --

THE COURT: I'm asking. I'm not saying a thing.

MR. CHANNAPATI: Well, if there is a suggestion being made about that, if the jury finds the defendant guilty of Rape in the First Degree, they can thereby bypass sexual abuse in the --

THE COURT: What the People are saying is they are saying it should be charged, but it could be charged in the alternative.

MR. GREENBERG: It just seems to me, your Honor, that it's really an extraneous charge. It's giving the jurors an alternative.

THE COURT: The People are saying, if they found him guilty of rape, then they are going to pass that

1 one.

2 MR. GREENBERG: If they find him guilty of  
3 rape.

4 THE COURT: Then they pass. If they find him  
5 not guilty of rape, it will still be there.

6 MR. GREENBERG: I just think it's setting up  
7 confusion.

8 THE COURT: Well, of course, the Court is  
9 always concerned about confusion, and I don't have to rule  
10 on it, because it's preliminary, but it seems to me I need  
11 a stronger reason not to charge it then I've heard.

12 Those are our preliminary discussions  
13 regarding the charges.

14 I'll look at them again. That is the charges  
15 regarding the law.

16 The next thing I look at is -- that's sort of  
17 the alpha. Now, we'll have the Omega.

18 Can I have a printout of the verdict so we're  
19 all on the same page.

20 Then we'll set those up as a list, but we  
21 might as well do it now

22 I have received a printout which the clerk  
23 keeps a record of the exhibits. So let me read from them.  
24 There's 23 Exhibits, 23 numbered items on the list, and  
25 these were all introduced by the People.

Exhibit 1 is a diagram, a copy of a summons, a Civil Court summons. Is that the People's?

MR. CHANNAPATI: No.

MR. GREENBERG: I --

THE COURT: Did you introduce it in evidence?

MR. GREENBERG: No.

THE COURT: It's not in evidence.

THE CLERK: Marked for ID.

THE COURT: So that's not --

MR. GREENBERG: I marked it.

THE COURTS AND THE POLICE

identification.

THE COURT: It's not in evidence.

What is Exhibit 1?

MS. CHANNAPATI: It's a schematic drawing of her apartment.

THE COURT: That's what it is.

No. 1 is a diagram, the schematic of the apartment, that's People's 1; and then 2 is A through E, five photographs on a board; 3-A through H, eight photographs on a board; 4-A through F, six photographs on a board; 5, the duvet; 6, the bath robe; 7 consists of A, B, and C, three photographs. Those are, I think, the things found in his apartment. 8-A, C, D, and that was the 911

- Charge Conference -

834

1 call; 9, the rape kit; 10 is a large bag.

2 Remind me what was in it.

3 MR. CHANNAPATI: The bag, that vouchered the  
4 duvet cover.

5 THE COURT: Vouchered the duvet cover.

6 Let me put that in.

7 11 is a street map; 12 consists of 12-A and  
8 12-B. These are medical records or what.

9 MR. CHANNAPATI: No, DNA files.

10 THE COURT: DNA files.

11 13 is a diagram of what?

12 MR. CHANNAPATI: It's a chart of the DNA  
13 results.

14 THE COURT: Then there's something in  
15 parenthesis. I am looking for 14 and 15. So 14, 15, and  
16 16 are Verizon records.

17 MR. CHANNAPATI: Yes.

18 THE COURT: 17 is two photographs. That's the  
19 lineup; is that correct?

20 MR. CHANNAPATI: No. That's pictures of the  
21 defendant, photos of the defendant.

22 THE COURT: 18 is the Miranda warnings; 19 is  
23 the DNA Consent Form; 20 is the Consent to Search Form;  
24 21-A and B, lineup photographs, there's two; and 22 is  
25 medical records; and 23 is a diagram of the female

1 genitalia.

2 So, that's our record of what the exhibits  
3 are, and that's what -- at some point in my charge I read  
4 to the jury what the exhibits are.

5 So, if there's no objection, then I'll work  
6 from this list.

7 All right. Then, now, I'll go to my general  
8 charges, and then we'll figure out whether there's any  
9 other kind of charges that would be needed.

10 THE COURT: There is a part that's  
11 pre-summation instruction, and that essentially tells the  
12 jury that "both sides have rested, and we reach the part  
13 where you're going to hear summation of counsel, and after  
14 that the Court will give you instructions under the law.  
15 Defense counsel makes his summation first."

16 You're going to make a summation, Counsel?

17 MR. GREENBERG: I would like to.

18 THE COURT: Thank you.

19 Well, I don't want to presume, and the  
20 prosecution follows, and it says, "in making their  
21 summations, both the lawyers will review the evidence which  
22 you have heard and seen during the course of the trial and  
23 will suggest to you certain inferences or conclusions which  
24 each lawyer believes may, in his or her opinion, be  
25 properly drawn from the evidence in the case. If you find

## - Charge Conference -

836

1 either one persuasive, you can follow it, but it's not  
2 evidence."

3 And then after that, after the closings, then  
4 we come to the final instructions. The first part is an  
5 introductory paragraph telling them that my instructions  
6 will be in three parts.

7 In other words, I'm going on down, the first  
8 then is tell them they just heard the summation of counsel  
9 and to repeat, essentially, what I said before.

10 Next, is the review of the law. That is the  
11 essential principles of law from the preliminary charge.

12 Then next is questions of witnesses, but the  
13 thrust of that instruction is not -- "Do not give anymore  
14 weight to an answer elicited from the question asked by the  
15 Judge than you give to my other answer."

16 Then it goes back into the safeguards.  
17 "Defendant is presumed to be innocent. The People have the  
18 burden of proof." There is another paragraph there, "the  
19 defense is not required to put on a defense."

20 You want this, Counsel?

21 MR. GREENBERG: Absolutely.

22 THE COURT: All right. The burden never  
23 shifts; the standard of proof, the standard of proof is  
24 beyond a reasonable doubt; if you have a doubt, then the  
25 defendant is entitled to the benefit.

1                   "Reasonable doubt, if instead of being based  
2                   on the nature and quality of the evidence, it's based on a  
3                   whim or something else, that's not reasonable doubt."

4                   The final paragraph there tells them that I  
5                   will be instructing them concerning the law as it relates  
6                   to the charges in those instructions.

7                   I'll tell you about each element of the  
8                   offenses charged, what you need to know. Now, the burden  
9                   of proof, beyond a reasonable doubt attaches to each  
10                   charge, et cetera; consideration of punishment; no concern  
11                   about possible punishment; then it goes into evidence,  
12                   somewhat repetitive of what we said before; "evidence  
13                   consists of oral testimony under oath, stipulations by the  
14                   parties, and physical exhibits which during the trial were  
15                   either introduced by the Assistant District Attorney and by  
16                   the defense and which were allowed in evidence."

17                   "Questions by them themselves are not  
18                   evidence; any testimony stricken from the record, any  
19                   exhibits marked for identification, but not allowed into  
20                   evidence are to be disregarded."

21                   Counsel, here we can talk about the issue of a  
22                   curative instruction. You said at one point -- and that  
23                   was the issue about Detective Harvin's answer which was not  
24                   consistent with what was in the discovery.

25                   We did give a curative instruction, and this

1 charge here does say, "Anything that was ordered stricken  
2 from the record is not to be looked at by the jury."

3 Do you want something more?

4 MR. GREENBERG: I just want your Honor to  
5 stress to them that they need to put that out of their mind  
6 and that whatever was said cannot be deemed as testimony or  
7 evidence.

8 THE COURT: We'll stay with this, unless  
9 there's different language.

10 Each side can call witnesses. There's no duty  
11 on the defense to call witnesses. Credibility, that's up  
12 to the jury to decide credibility.

13 MR. GREENBERG: Your Honor, at that point --  
14 may I just jump in? Do you have a police officer's --

15 THE COURT: It's coming.

16 Gives them the test; they may use the common  
17 sense test; is the witness interested or disinterested;  
18 then falsus in uno; there's an interested witness charge,  
19 but I don't believe there's an interested witness.

20 Is there anybody asking for a charge?

21 MR. CHANNAPATI: I'm sorry?

22 THE COURT: Interested witness, we don't have  
23 any.

24 MR. GREENBERG: Well, your Honor --

25 THE COURT: Yes.

MR. GREENBERG: I would just say that the -- would ask with respect to the complainant that she's an interested witness. She's testified that she's a party to a lawsuit, and she does have an interest in this outcome.

MR. CHANNAPATI: Your Honor, as a matter of law, the witness is not -- the complainant is not an interested witness in this case.

THE COURT: Defense; I think as a matter of law, she's not. So I don't think I'll give that.

There's a charge about the defendant testifying, but he did not testify. So I'll give that, and there's a charge, if he does not testify, and I'll give that.

It says, "The defendant did not testify in this case. I charge you that the fact that the defendant did not testify is not a factor from which any inference unfavorable to the defendant may be drawn."

Then police officer witnesses, "Police officers have testified in this case. You should use the same tests in evaluating the testimony of such police officers as you will use in evaluating the testimony of any other witness. The mere fact that the witness was a police officer does not require you to give that testimony any greater or lesser credibility than that of any other witness."

## - Charge Conference -

840

1                   Then there's a charge about the exhibits  
2 where -- I just read what they are. I'll tell them that  
3 "any exhibits which were marked for identification, but not  
4 received into evidence cannot and must not be considered by  
5 you."

6                   During your deliberation, "if you wish during  
7 your deliberation to exam any exhibit, it will be brought  
8 to you, just give the Court a note."

9                   In here, I usually insert a photograph charge,  
10 and that charge just says, "Among the exhibits received  
11 into evidence were photographs. These photographs intend  
12 to portray various locations or objects relevant to the  
13 issues in this case. These photographs were received into  
14 evidence to assist you in making your evaluation of the  
15 testimony relating to locations, scenes, or objects  
16 depicted in them.

17                  "You are the sole judges of the accuracy of  
18 these photographs, and you are the sole judges of the  
19 weight to be given to these photographs."

20                  Then there comes the charges about specific  
21 offenses, and I will let you see what I'm proposing to give  
22 before I finalize it.

23                  Yes?

24                  MR. GREENBERG: One other thing, I believe, I  
25 have on my list, the inference that if there's a piece of

1 evidence it goes to the inference in favor of the defendant  
2 towards innocence as opposed to guilt.

3 THE COURT: You have to give me that.

4 MR. GREENBERG: All right.

5 THE COURT: You will produce it. I've seen  
6 it. The People will want to look at it. They are looking  
7 as if they haven't seen it. Counsel will produce it. I  
8 have seen it. I can't say how I've ruled in the past, but  
9 I'll look at it.

10 MR. CHANNAPATI: Just so I'm clear, what is  
11 the charge?

12 THE COURT: It's a charge along the lines when  
13 you have a doubt, the inference goes their way, and he'll  
14 produce the language.

15 MR. CHANNAPATI: With respect to the evidence,  
16 not exhibits.

17 THE COURT: Yes, evidence, but they will show  
18 us what they want.

19 Now, after the Court gives the charges  
20 regarding the specific offenses, there's charges regarding  
21 their duty to deliberate.

22 You all know that language, but I'll just read  
23 it.

24 "In order to return a verdict, each juror must  
25 agree to the verdict. You, as jurors, have the duty to

## - Charge Conference -

842

1 consult with one another, to deliberate with a view to  
2 reaching an agreement, if it can be done, without giving up  
3 individual judgment.

4 "As jurors, each one of you must decide the  
5 case for yourself, but only after an impartial  
6 consideration of the evidence with your fellow jurors.

7 "No juror should give up any honestly held  
8 conviction as to the weight or effect of the evidence  
9 solely because of the opinion of your fellow jurors or for  
10 the mere purpose of returning the verdict.

11 "During the course of your deliberation, you,  
12 as individuals, should not hesitate to re-examine your own  
13 views and change your opinion if convinced it is  
14 erroneous."

15 Then the charge is, if they, if their  
16 recollection fails or they want to get instruction  
17 regarding the law, they have the option of returning to the  
18 courtroom to have that testimony or instructions read back  
19 to them.

20 The foreman should fill out a note, and we'll  
21 respond to the note. Exhibits, again, are referred to, and  
22 they are told to get the exhibits, make a note and ask for  
23 it.

24 Unanimous verdict; all 12 members must agree.  
25 Let the Court know when you have reached a verdict;

## - Charge Conference -

843

1 instructions to alternate jurors is the part where they are  
2 told they will be in a separate room. After I give that  
3 instruction, I call you up and decide what we're doing with  
4 the alternates and concluding remarks.

5 "I'm submitting the case to you. The law and  
6 your oath require that you render a fair and impartial  
7 verdict without fear, favor, or sympathy; therefore, take  
8 the case and render a true and impartial verdict."

9 Now, there would also be -- let me take a  
10 look. There would also be an expert witness charge, and we  
11 have drafted one so you can both look at it. It's straight  
12 from the CJI.

13 MR. CHANNAPATI: That's fine, your Honor.

14 THE COURT: So both sides have looked at that.  
15 As I said, it's straight from the Criminal Jury  
16 Instructions.

17 Any other charge other than the one that the  
18 defendant indicated that they would want to add? Any other  
19 suggestive charges?

20 All right. I'm hearing nothing. So that then  
21 concludes our preliminary --

22 MR. CHANNAPATI: Your Honor, in the event that  
23 I do think of something, can we re-visit the issue tomorrow  
24 morning?

25 THE COURT: This is preliminary. I thought we

- Charge Conference -

844

1 were going to go through and get it done today, but in any  
2 event --

3 MR. CHANNAPATI: As of now, there's nothing.  
4 I just want to make sure the door is still open,  
5 nonetheless.

6 THE COURT: Well, with that, then it sort of  
7 raises the issue of scheduling.

8 THE COURT OFFICER: Jury entering.

9 (Whereupon, the jury enters the courtroom and  
10 is properly seated.)

11 THE CLERK: All jurors are present.

12 Do both sides waive the reading of the roll?

13 MR. GREENBERG: Yes.

14 MR. CHANNAPATI: So waived.

15 THE COURT: Defense.

16 MR. GREENBERG: Your Honor, the defense rests.

17 THE COURT: Thank you.

18 Ladies and gentlemen, both the People and the  
19 defendant have rested.

20 In terms of scheduling, we're going to adjourn  
21 now, and in the morning we're going to have summation by  
22 the lawyers and final charges from me, and you will be  
23 deliberating.

24 So that means, now, we are adjourning for the  
25 evening, and, of course, there's no discussion. My same

- Charge Conference -

845

1 instructions to you -- do not discuss the case with anyone;  
2 do not allow anyone to discuss the case in your presence;  
3 do not visit any of the locations which you have heard  
4 referred to; do not attempt to research any point by any  
5 means regarding any issues that come up during the trial;  
6 you must, of course, promptly report to me any attempt by  
7 anyone to influence you, and you must form no opinion  
8 whatsoever about the guilt or innocence of the defendant.

9 You will determine all those matters when you  
10 begin your deliberations.

11 Anybody have any questions?

12 Therefore, then, 9:30 tomorrow. You will  
13 report into the jury room. We'll see you then. Please,  
14 leave your books.

15 You need to be on time, ladies and gentlemen.

16 (Whereupon, the jury exits the courtroom.)

17 THE COURT: The jury has left the courtroom.

18 Is there anything else that either side wants  
19 to bring to the Court's attention before we adjourn?

20 Both lawyers are shaking their heads in the  
21 negative.

22 See you tomorrow at 9:30.

23 MR. CHANNAPATI: Thank you, your Honor.

24 (Whereupon, the case on trial was adjourned  
25 to June 7th, 2006)

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF KINGS - CRIMINAL TERM - PART: 3  
3 -----X  
4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against-

6 INDICTMENT NO.  
7 2518/2003

8 DENNIS COLON,  
9 Defendant.

10 -----X  
11 320 JAY STREET  
12 BROOKLYN, NEW YORK 11201  
13 JUNE 7, 2006

14 B E F O R E:

15 HONORABLE JAMES P. SULLIVAN,  
16 Justice and jury

17 A P P E A R A N C E S:

18 CHARLES J. HYNES, ESQ.  
19 District Attorney, Kings County  
20 BY: ANITA CHANNAPATI, ESQ.  
21 BY: LOUISE COHEN, ESQ.  
22 Assistant District Attorney

23 HARLAN GREENBERG, ESQ.  
24 DENNIS PETRE  
25 30 Vesey Street, 15th Floor  
New York, New York  
Attorneys for the Defendant

26 William Cardenuto  
27 Senior Court Reporter

- Proceedings -

847

1 THE CLERK: Case on trial, Indictment 2518 of  
2 2003, Dennis Colon.

3 All parties are present and the defendant is  
4 present.

5 MS. CHANNAPATI: Anita Channapati for the  
6 Office of the District Attorney.

7 MR. GREENBERG: Harlan Greenberg on behalf of  
8 the defendant.

9 THE COURT: Good morning.

10 Yesterday, we had a preliminary charge  
11 conference, and we went through and we discussed the  
12 charges. Defense had a proposed charge. I don't think the  
13 People had any additional charges.

14 So, defense, do you have your --

15 MR. GREENBERG: Your Honor, I looked for the  
16 charge. I couldn't find it. The charge, essentially, is  
17 that if there's an item in evidence that has an inference  
18 to guilt and innocence, they must find that piece of  
19 evidence, they must give the benefit of the doubt --

20 THE COURT: Counsel, I suggest you write it.  
21 It could be handwritten, and we'll examine it and decide.

22 Now, there's an issue that we need to discuss.  
23 There's an issue about burglary in this case, and my  
24 understanding, and I'll tell you what my understanding is,  
25 is that the cases require -- the New York cases require a

- Proceedings -

848

1 clear direction to leave.

2 I don't recall hearing that.

3 MR. GREENBERG: I'm sorry. A clear direction  
4 to?

5 THE COURT: To leave.

6 MR. GREENBERG: To leave.

7 THE COURT: If there is not that, I don't  
8 recall hearing it, then, as I understand the cases, the  
9 People's theory could be trickery, but I do not recall  
10 being in evidence either --

11 MS. CHANNAPATI: Your Honor, could I have a  
12 moment?

13 THE COURT: Yes.

14 MS. CHANNAPATI: I found it. Page --

15 THE COURT: I'm not looking at it. I'm going  
16 to listen, and then I'll look at it.

17 MS. CHANNAPATI: For the defense attorney's  
18 benefit, Page 547, Line 16:

19 "QUESTION: Ms. Krioutchkova, did the  
20 defendant have your permission to stay in your apartment at  
21 that point?

22 "ANSWER: When I saw this, I was saying, 'Get  
23 out', and I was screaming for help."

24 All right. There's one more.

25 THE COURT: Go ahead.

- Proceedings -

849

1                   The People have cited the line where the  
2 complainant said, "Get out."

3                   MS. CHANNAPATI: Page 548, Line 4:

4                   "QUESTION: You said he pushed you. How did  
5 he push you?

6                   "ANSWER: I was saying, 'Get out from here.  
7 Help me. Help me.' And he pushed me very hard. He pushed  
8 me, and I was falling, like, backwards. He was following  
9 me."

10                  THE COURT: The People have cited another line  
11 where the complainant testified she said, "Get out."

12                  So, the Court is satisfied that that direction  
13 was given. So, we've crossed that hurdle. We then move to  
14 looking at other cases, and all of these have to be typed  
15 up, that is, looking at the other charges.

16                  Now, with respect to -- we have seven counts,  
17 and we might as well just go there, and I want to just get  
18 my copy of the indictment

19                  Looking at the indictment there, the first two  
20 counts are Burglary in the First Degree.

21                  The Court has discussed the question that we  
22 just raised, and the Court is satisfied that the direction  
23 to leave was given. Then the Court is now satisfied that  
24 it must give, at least, one of the burglary counts, but it  
25 doesn't have to give both of the burglary counts, and at

- Proceedings -

850

1 this point, I'm inclined not to give both of the burglary  
2 counts.

3 So, we'll have a discussion about that.

4 MS. CHANNAPATI: Your Honor, the People's  
5 position is that both burglary counts should be given,  
6 because it's entirely reasonable that the jury could find  
7 that she was injured as a result of the rape during the  
8 course of the burglary, and, therefore, suffered a physical  
9 injury, but, you know, there is, you know, a question in  
10 the evidence about the knife that was used during the  
11 attack, and it's conceivable they could find that the knife  
12 was used, and they didn't believe there was an injury or  
13 vice versa.

14 So, the People would request that both charges  
15 be presented to the jury.

16 THE COURT: The defense may answer, but the  
17 Court will agree that injury has been questioned, and the  
18 knife has been questioned.

19 Defendant.

20 MR. GREENBERG: Your Honor, I'm just  
21 reading -- I'm going to ask that you preclude one of the  
22 burglary charges.

23 It just seems to me that if the jury is going  
24 to find the complainant credible, they are going to find  
25 that he used a knife, and I don't think the physical injury

- Proceedings -

851

1 is necessary for them to prove their case at that point, if  
2 she's found credible, and I think it would be duplicative.

3 THE COURT: I don't know if I would go that  
4 far, but I do lean to Charge 1 and not both, and I do lean  
5 to charge Count 1, which cites the knife.

6 If I do that, then we'll have to look at the  
7 assault issue, and since injury has been raised and there  
8 is a question about it, my inclination is to charge the  
9 assault, but then I'll still have to look at it later with  
10 regard to whether there was an injury.

11 So my leaning is to charge the assault.

12 Then Rape in the First Degree, that gets  
13 charged, it would seem to me, under any circumstance.

14 Next, we come to two counts of Sexual Abuse in  
15 the First Degree. The Court believes that it must charge  
16 the finger to penis, but will not -- I'm sorry -- the  
17 finger to vagina, but will not charge the penis to vagina,  
18 because it is covered.

19 So, just based on what I just said, I was  
20 looking at Count 4 and Count 5. Count 4 is penis to vagina  
21 Count 5 is finger to vagina. I would not be charging Count  
22 4. I would be charging Count 5.

23 MS. CHANNAPATI: Your Honor, from yesterday's  
24 discussion, so you're not going to give an --

25 THE COURT: Well, I'm telling you what my

- Proceedings -

852

1 leanings are.

2 MS. CHANNAPATI: Because the People would  
3 request that there would be an instruction that if the  
4 defendant is found guilty of Rape in the First Degree, then  
5 they would skip Count 4 and just proceed to Count 5.

6 THE COURT: We talked about that yesterday,  
7 but the Court has thought about it and doesn't believe it  
8 should be charged at all.

9 So that would be Count 5, but not Count 4.

10 Count 6 is the assault. We talked about it.  
11 It now gets charged with the understanding that I'm not  
12 charging the Assault 1 in the burglary, and the Count 7,  
13 rather, I'm not charging the burglary which relates to an  
14 injury.

15 Count 7 is Criminal Possession of a Weapon in  
16 the Fourth Degree. The Court believes that should not be  
17 charged.

18 Therefore, the Court's leaning -- and I want  
19 to go back and check on this, and I have to write some  
20 stuff up. The Court's leaning is to charge -- I'll just  
21 make a little chart here for myself.

22 All right. I've just made my own charts, and  
23 this is, again, I said leanings, and I'll adjourn for a few  
24 minutes.

25 Count 1, Burglary in the First Degree and that

- Proceedings -

853

1 allegation, the use of a knife, that would be charged.

2 Count 2, Burglary in the First Degree, that  
3 alleges an injury in the course of the burglary, that would  
4 not be charged.

5 Count 3 is Rape in the First Degree. That  
6 would be charged.

7 Count 4, Sexual Abuse in the First Degree. It  
8 alleges penis to vagina contact. That would not be  
9 charged.

10 Count 5, Sex Abuse in the First Degree, that  
11 alleges finger to vagina contact. That would be charged.

12 Count 6, Assault in the Second Degree, that  
13 would be charged.

14 Count 7, Criminal Possession of a Weapon in  
15 the Fourth Degree, alleging a knife, that would not be  
16 charged.

17 Is there anything else before I adjourn,  
18 briefly?

19 Counsel, you can write your charge up.

20 MS. CHANNAPATI: Your Honor, I don't know if  
21 this is now the appropriate time. I am going to ask for a  
22 brief recess in between the summation just after defense  
23 counsel is done.

24 THE COURT: How brief is brief?

25 MS. CHANNAPATI: Five minutes.

- Proceedings -

854

1 I want to be able to set up my exhibits  
2 outside of the presence of the jury very briefly. I have  
3 to check the CD player and make sure it's working

4 THE COURT: People, I don't like that kind of  
5 break up. I'm going to take an adjournment now. I don't  
6 know where the exhibits are.

7 (Recess taken.)

8 THE COURT: On the record.

9 Two things. Defense counsel has given the  
10 Court it's proposed language that we discussed the defense  
11 was requesting.

12 People, did you look at it?

13 MS. CHANNAPATI: Yes, your Honor. The People  
14 have had an opportunity to look at it.

15 THE COURT: Yes.

16 MS. CHANNAPATI: Your Honor, when defense  
17 counsel mentioned the charge yesterday, I, myself, did a  
18 search and didn't find anything in the CJI, and I would  
19 think it's inappropriate for that language to be placed  
20 when the reasonable doubt charge is more than sufficient in  
21 terms of how the evidence should be taken in favor or  
22 against the defendant depending on the weight they give it.

23 THE COURT: All right. The Court looked at  
24 the charge, and the Court agrees with the People that the  
25 reasonable doubt charge does cover it. This charge invites

- Proceedings -

855

1 a piece meal approach which the Court does not believe is  
2 proper.

3 In the meantime, the Court has done some  
4 further thinking, and it might be dangerous and has come up  
5 with a slightly different platform, but let me find the  
6 stuff here.

7 Both counselors can approach.

8 (Brief discussion held off the record at the  
9 Judge's bench.)

10 THE COURT: With regard to what I said, the  
11 Court has decided it will charge Attempted Assault in the  
12 Second Degree as a lesser included of Assault in the Second  
13 Degree.

14 It's in the alternative, and that revised  
15 verdict sheet has been given to both the People and the  
16 defense.

17 Just to go over it, well be charging Burglary  
18 in the First Degree. We already discussed that. Rape in  
19 the First Degree. We discussed that. Sexual Abuse in the  
20 First Degree, which is the finger to vagina, and Assault in  
21 the Second Degree, and then, 5, Attempted Assault in the  
22 Second Degree.

23 With all of that, is there anything else that  
24 we need to discuss?

25 Neither lawyer is saying there's anything else

- Proceedings -

856

1 we need to discuss.

2 MS. CHANNAPATI: No, your Honor.

3 MR. GREENBERG: No, your Honor.

4 THE COURT: With that, give me about five  
5 minutes so I can put all of this in my binder. I'm trying  
6 to get that attempted assault printed. So I'll be right  
7 back.

8 (Brief recess taken.)

9 THE COURT: Counsel, did you look at that form  
10 and discuss it with your client?

11 MR. GREENBERG: Yes.

12 THE COURT: I'll receive it back.

13 Any issues, Counsel?

14 MR. GREENBERG: No, your Honor.

15 With respect to the fifth one, is that as a  
16 result of a reasonable view?

17 THE COURT: No, the form regarding his not  
18 testifying.

19 MR. GREENBERG: I've discussed it with him.

20 THE COURT: He's okay with it?

21 MR. GREENBERG: We're okay with each other.

22 THE COURT: It's in my file.

23 Thanks.

24 MR. GREENBERG: Thank you, your Honor.

25 THE COURT: We want him to sign it.

- Proceedings -

857

1 MR. GREENBERG: You wanted him to sign it?

2 THE COURT: Yes.

3 MR. GREENBERG: For you?

4 THE COURT: It let's him know that he's  
5 entitled to testify if he wanted to.

6 With all of that, there's one other thing that  
7 I needed to go into which I did not mention, and I want to  
8 take a look here.

9 I'm looking now at Burglary in the First  
10 Degree, under Penal Law 140.30, Sub 3, and as indicated,  
11 that I would be charging.

12 It has to be changed in the instruction. It  
13 references to knowingly entered unlawfully, because there's  
14 no indication that the defendant knowingly entered  
15 unlawfully. The indication is that he remained unlawfully,  
16 and so let's just continue where I would be going.

17 I'm looking at the instruction. In the second  
18 paragraph it says, "Under our law, a person is guilty of  
19 Burglary in the First Degree when that person knowingly  
20 enters or remains unlawfully in a dwelling with the intent  
21 to commit a crime therein, and when in effecting entry or  
22 while in the dwelling or immediate flight therefrom the  
23 person uses or threatens the immediate use of a dangerous  
24 instrument" -- I would strike "enters or," and then it  
25 would be say, "When a person knowingly remains unlawfully

## - Proceedings -

858

1 with the intent" -- I'm striking the words "enters or" in  
2 that paragraph.

3 The second paragraph gives the terms  
4 "dwelling," "unlawfully," "knowingly," "intent," "dangerous  
5 instrument," that would apply.

6 "A dwelling is a building which is usually  
7 occupied by a person lodging therein at night. Where a  
8 building consists of two or more units separately secured  
9 or occupied, each unit shall be deemed both a separate  
10 building in itself and a part of the building."

11 The next paragraph, "A person knowingly enters  
12 or remains unlawfully" -- I'm going to strike "enters or."  
13 And then it says, "When that person has no license or  
14 privilege to enter or," I'm going to strike "enter or," to  
15 remain, then it goes on about what a license or privilege  
16 is. I'm going to strike the "privilege to enter or" and  
17 just privilege to remain.

18 Again, in the next paragraph, you have the  
19 word "enters or." I'm striking the words "enters or" and  
20 then the next line in that paragraph, "he or she is  
21 entering or," I'm striking "entering or." In each case it's  
22 going to say, remaining, and it goes onto intent.

23 "The crime of burglary is distinct from any  
24 other crime." Then, in that phrase about the crime of  
25 burglary, is complete in this case, it would be when the

- Proceedings -

859

1 person knowingly remains. So I'm striking enters --  
2 striking "enters or."

3 Then it goes onto talk about dangerous  
4 instrument, which stands by itself. Then in the elements  
5 in one, it says, "unlawfully entered or." I'm striking  
6 "entered or."

7 So, it will say, remained; did so knowingly;  
8 intent to commit a crime; and in the fourth element, "in  
9 effecting entry," I'm going to say, that while in the  
10 dwelling -- I'm strike the words "in effecting entry or,"  
11 that while in the dwelling, he used or threatened to use,  
12 namely, a knife, and then the language is as it is.

13 Any other comments on that? Any other  
14 reactions?

15 MR. GREENBERG: No.

16 MS. CHANNAPATI: No, your Honor.

17 THE COURT: If there's nothing else, we're  
18 ready for the jury.

19 THE COURT OFFICER: Ready for the jury?

20 THE COURT: We are.

21 THE COURT OFFICER: Jury entering.

22 (Whereupon, the jury enters the courtroom and  
23 is properly seated.)

24 THE CLERK: All jurors are present.

25 Do both sides waive the reading of the roll?

- Closing Arguments -

860

1 MR. GREENBERG: Yes.

2 MS. CHANNAPATI: Yes.

3 THE COURT: Good morning, ladies and gentlemen  
4 of the jury. It's a little chilly in the building, I  
5 agree, but it's a modern building. We can't open any  
6 windows.

7 Ladies and gentlemen of the jury, both sides  
8 have rested in this case. The presentation of evidence is  
9 complete. We have now reached the point in the trial where  
10 you will hear summations of the lawyers.

11 Following those summations, I'll instruct you  
12 as to the laws, rules, and principles of law which will  
13 guide you during your deliberation and in rendering your  
14 verdict.

15 Under the law, the defense attorney will make  
16 his summation first, and the prosecution will follow in  
17 making their summation. Both attorneys will review the  
18 evidence which you have heard and seen during the course of  
19 this trial, and they will each suggest to you certain  
20 inferences or conclusions which each of them believes, that  
21 is, in their opinion, may be properly drawn from the  
22 evidence in this case.

23 If you find that a particular lawyer's  
24 analysis of the evidence is correct and accurate, then you  
25 are at liberty to adopt such inference and conclusion,

- Closing Arguments -

861

1 either in whole or in part.

2 On the other hand, if you find that a  
3 particular lawyer's analysis of the evidence is not correct  
4 and not accurate, then you are at liberty to disregard such  
5 inference and conclusion, either in whole or in part.

6 Either way, you, the jury, are free to draw  
7 your own conclusions based upon your analysis of the  
8 evidence that was presented.

9 Nothing said by either lawyer in their  
10 summation is evidence in this case. Nothing that I will  
11 say in my final instruction to you will be evidence either.

12 As of yesterday when both sides had rested,  
13 you have heard all of the evidence in the case. It is you  
14 and you alone, ladies and gentlemen, who are the exclusive  
15 judges of the facts in this case.

16 Counsel.

17 MR. GREENBERG: Thank you.

18 THE COURT: They need pens. Just a moment.

19 Proceed, Counsel.

20 MR. GREENBERG: Thank you, your Honor.

21 Good almost afternoon. When I first spoke to  
22 you in voir dire, I tried to focus you on critical concepts  
23 and things that are essential for a juror to have and to  
24 use when they evaluate evidence.

25 I selected you, because I believed that each

## - Closing Arguments -

862

1 of you possessed the ability and understood the critical  
2 concepts that you're going to be presented with by Judge  
3 Sullivan.

4 When you're in the jury room, you may need to  
5 rely upon each other and remind each other of these  
6 concepts and why they are important. What I am really  
7 telling you is that these concepts are what our whole  
8 criminal justice system is based upon.

9 You took an oath that you would not expect the  
10 defense to prove or disprove anything, and when you took  
11 that oath at the beginning of the case, it runs straight  
12 through to right now.

13 I do not have to present you with any  
14 evidence. In fact, I didn't. I don't have to disprove any  
15 of the evidence. If there are any questions in your mind  
16 with respect to the events that took place on March 26th,  
17 2003, if there are any ambiguities, anything that needs to  
18 be clarified, you cannot hold that against me and Dennis  
19 Colon.

20 The sole burden of proof, a heavy burden of  
21 proof, is at this table with the government. Dennis Colon  
22 did not testify, and the Judge will instruct you that you  
23 cannot hold that against him.

24 You cannot speculate as to why he did not  
25 testify. You can't make an inference why he didn't

## - Closing Arguments -

863

1 testify. You can't make an inference, a negative inference  
2 because of it.

3 There's absolutely no obligation for us, the  
4 defense, to give you anything. It is the way our criminal  
5 justice system, our constitution and the way our laws are  
6 set up.

7 It's done that way for a purpose. Before  
8 someone could be convicted of any crime, the People, the  
9 government, must prove beyond a reasonable doubt all of the  
10 evidence and the guilt of the defendant.

11 It's just the way it is, and as I said  
12 earlier, you were selected, because we believed that you  
13 had the abilities to follow those principles, those  
14 critical principles that are part of this country's  
15 criminal justice system.

16 If there's a failure, if there's proof  
17 lacking, if you feel a desire that there's more proof, that  
18 you need more proof, that rests here and not with the fact  
19 that Dennis Colon didn't testify or that the defense didn't  
20 present any evidence.

21 We rely -- when I say "we," I mean, the Court,  
22 system, the defendants, prosecution, the community, the  
23 State, and the country rely on juries like you and your  
24 strength to uphold the principle no matter how difficult it  
25 is.

## - Closing Arguments -

864

You are the reason that this system runs, and you are important. You are the people. You are the community. You are the peers. You uphold the principles of the criminal justice system.

You assured me and the Court that at the beginning of this case, no matter how serious the charges presented to you, you would not lower the standard of proof, the burden of proof on the government. No matter whatever the enormity of the allegations, you assured us and you took an oath that you would follow the law.

You also assured us that if you had a feeling or a hunch whether you felt sympathy that that would not be a basis for your decision, that the decision will be based on proof.

The government's obligation is to present to you credible, reliable, believable evidence to meet their burden of proof. There was only one witness that could testify with respect to the encounter between Vera Krioutchkova and Dennis Colon and that was Vera Krioutchkova.

I submit to you that you cannot rely upon her beyond a reasonable doubt. I submit to you that she's not credible, and as a result of that, you can reject her testimony. You can reject portions of her testimony, or you can reject her testimony as a whole. I submit to you

- Closing Arguments -

865

1 that you should reject her testimony in its entirety.

2 She's clearly a flawed person.

3 You have to ask yourself, when in your own  
4 life when you have to rely upon someone to make an  
5 important decision in your own life, is she someone that  
6 you could trust? Is she someone that you can rely upon?

7 I submit that you cannot. I submit to you  
8 that she's a manipulative, shrewd, unstable person willing  
9 to seize an opportunity if it presents itself. She's lived  
10 in this country for approximately ten years and has been  
11 involved in a number of civil litigation.

12 The first incident she was involved with was a  
13 car accident which she told you about. She can't tell you  
14 what her injuries were, where it happened, what it was  
15 about, who was involved. She knew nothing about it.

16 The only thing she knew about that first  
17 incident, if you recall the testimony, was the last thing  
18 we brought out -- that she had a car accident and that she  
19 got money from a lawyer. That's all she knew.

20 She had a second car accident where she  
21 couldn't recall whether she was a driver, a passenger, or  
22 maybe she was a passenger or maybe she was a driver. She  
23 just couldn't remember.

24 What's interesting about that case and what's  
25 problematic is that she had a serious allegation or she

## - Closing Arguments -

866

1       alleged that she had a serious injury and she had knee  
2       surgery as a result of that accident.

3               I submit to you, if you looked into your own  
4       experiences and you were required to have surgery as a  
5       result of an accident, I submit to you that would you know  
6       what took place; you would know where it happened; who was  
7       in the car; and what was going on.

8               But she can't remember a thing, and I submit  
9       to you that creates a lot of problems with her testimony  
10      and whether or not you can believe her.

11              Why can't she remember an incident that  
12       required her to see doctors and, ultimately, see a  
13       specialist and have surgery?

14              There's two reasons -- A, she doesn't have a  
15       good memory. That is a problem if you apply it to this  
16       case. B, there was never an accident and she doesn't want  
17       to tell you that.

18              I don't know about that, but someone who can't  
19       describe any of those details is not someone who you can  
20       rely upon, especially if you need to rely upon them beyond  
21       a reasonable doubt

22              She had another lawsuit with her landlord.  
23       Her ceiling fell on her head. First, she testified that  
24       she doesn't remember much about it, that she had memory  
25       problems, and memory problems were better.

## - Closing Arguments -

867

I submit to you that she was evasive about that and that she had a long standing feud, issues with her landlord. She testified that she's currently in litigation with that landlord; however, on direct examination when she talked about the landlord, she said that she hardly complained and that she trusted the landlord. She trusted him.

She was suing him. She intended to have you believe that there was never an issue between her and the landlord and that she trusted him, believed in him, and that he wouldn't harm her.

I submit to you, there's a lot more there that meets the eye.

She brings a fourth lawsuit against the landlord and Dennis Colon, and I submit to you that all of that makes sense. She, in her statement, says that the landlord, Guy, he was sent over. Guy is sending me over.

Who is Guy?

Guy is the landlord. You heard that.

For her to have a valid lawsuit against the landlord, there needs to be a connection. The landlord owns the building. The landlord presumably has insurance. There needs to be a connection between the landlord and Dennis Colon. It seems to me that the focus of her attention and her ire is the fact she got a problem with

- Closing Arguments -

868

1 the landlord.

2 Detective Harvin told you that during her  
3 investigation she was never able to make any connection  
4 between Dennis Colon, the landlord, Guy Schebovitz'  
5 building, and Dennis Colon, and there's a reason why that  
6 is, because there is no connection.

7 Vera Krioutchkova has made the connection.  
8 She's the one that's made the connection.

9 Are her motives driven by money? Power?

10 I don't know.

11 Or are they driven by a psychiatric condition?

12 I don't know.

13 You, as people observing her, have to make  
14 that determination. I submit to you that it's clear from  
15 the testimony that she takes a fair amount of medication to  
16 keep herself stable, which gives rise to questions  
17 regarding her mental condition, and don't get me wrong. I  
18 don't want to pick on somebody who has psychiatric  
19 problems.

20 However, we're in a place where we need to  
21 rely upon that person beyond a reasonable doubt. This, as  
22 we discussed, is an important serious decision, and can you  
23 rely upon her beyond a reasonable doubt considering what  
24 you know about her psychiatric condition and the fact that  
25 she takes lots of medication during the course of the day?

## - Closing Arguments -

869

1                   When you look at the rest of the evidence, I  
2 submit to you, there are gaps, things that don't make sense  
3 and ambiguities and issues and problems. When you exam  
4 them, again, you can't hold that against the defendant. It  
5 lies at that table with the government.

6                   She testified that she came home from the  
7 hospital and there was a message on her answering machine,  
8 and the message on that answering machine was -- I'm sorry.  
9 I'm sorry -- which, I submit to you, would be a credible  
10 piece of evidence and would be very important if true, and  
11 it would have the voice of someone.

12                  However, she claims she told the police  
13 officer about it and that the police officer did nothing.  
14 The machine was never recovered, the tape was never saved,  
15 nothing. Detective Harvin knew nothing about it

16                  There's a reason why no one knew about it.

17                  Because it doesn't exist.

18                  The prosecutor introduced Verizon telephone  
19 records and showed you what Dennis Colon's telephone number  
20 was, what her telephone number was. You will see that  
21 there's no call, no second call on March 26th, 2003.

22                  That was not the truth, and I submit to you,  
23 if you believe that she did not tell you the truth with  
24 respect to that particular item, you cannot believe  
25 anything that she says. You can reject her entire

- Closing Arguments -

870

1 testimony.

2 The knife. Let's discuss the knife. She  
3 can't identify the knife. She says because he was holding  
4 it, she can't identify the handle.

5 The knife is critical. It's a critical piece  
6 of evidence. It's not here. There's photographs of the  
7 knife. You can't feel it. You can't touch it. You can't  
8 examine it.

9 Why?

10 Because the government and the people that  
11 work for them made a mistake.

12 MS. CHANNAPATI: Objection, your Honor.

13 THE COURT: Overruled.

14 MR. GREENBERG: They made a mistake. They  
15 checked the wrong box. They destroyed it. They destroyed  
16 evidence that is relevant in this case. It's not here.

17 That, ladies and gentlemen, is a problem.

18 Let's go a little further with the knife. She  
19 didn't identify the handle. I can identify the blade and  
20 the bottom.

21 Detective Harvin tells you, oh, yeah, she told  
22 me she could identify the handle. She said it had a  
23 strange or weird design. Vera tells us she can't identify  
24 it on the stand a few days ago, that she couldn't identify  
25 it, but Detective Harvin tells, oh, yeah, she can.

- Closing Arguments -

871

1 I submit, you can believe that, and then when  
2 pushed in cross examination, it became rather clear, I  
3 submit to you, that Vera was never able to identify a  
4 knife.

5 That gives rise to the question -- when did  
6 she identify the knife?

7 Well, I submit to you that she was presented  
8 with photographs -- is this the knife?

9 Yeah, that's the knife.

10 But then she doesn't really say that, because  
11 she says she can't identify the handle. I submit to you  
12 that the truth is that she was never able to identify the  
13 the knife, and I submit to you, there was no knife, because  
14 it's not believable. It's not credible that there was.

15 She also tells you that when he's in the  
16 apartment and he's holding a knife, he's yelling, "I'm  
17 going to kill you. I'm going to kill you. I'm going to  
18 kill you."

19 How many times did she say it? She said he  
20 said it a lot. "I'm going to kill you. I'm going to kill  
21 you."

22 The first police officer that arrives on the  
23 scene has a conversation with her. The only thing that she  
24 told him that he wrote down was the perpetrator said, "Lie  
25 on the bed."

- Closing Arguments -

872

1                   Shortly after the encounter, notes were taken  
2                   by a police officer whose only involvement was showing up  
3                   and talking with her. He spoke with her directly.

4                   She testifies also that he hit me in the face.  
5                   So, as telling, Don't look at me, and he hits her in the  
6                   face. Don't look at me. Look away.

7                   According to her testimony, she had been in  
8                   the apartment, and this is what she said, he was in there  
9                   for 10 to 15 minutes.

10                  He walked in. She looked at him through the  
11                  peephole. He walked into the bathroom. He walked into the  
12                  kitchen. He asked her for a piece of paper, they had a  
13                  discussion. They talked. She showed him some other damage  
14                  to the apartment. He's certainly not looking, if you  
15                  believe this, to secrete his identify.

16                  Then when she goes to the hospital and is  
17                  asked, "Were you hit in the face or the body?"

18                  She denies being hit in the face. She flat  
19                  out denies it. She testified she was slapped in the face.

20                  You also need to understand that this case is  
21                  not about identification. There was an encounter between  
22                  Vera Krioutchkova and Dennis Colon. That is for sure. We  
23                  know that for a number of reasons -- phone calls, two, not  
24                  three, two, and DNA.

25                  We live in a time and society where everybody

## - Closing Arguments -

873

1 knows that if you make a phone call there's going to be a  
2 record of it. We all know that. We see it on our bills.

3 If you're going to have sex or rape somebody,  
4 you're going to leave DNA, whether it be saliva or blood or  
5 semen. They are going to find you. We know that.

6 Dennis Colon was not looking to secrete  
7 himself. Vera would have you believe that, but he didn't.

8 Let's go to the April 5th telephone call. The  
9 April 5th telephone call was over 15 minutes long. The  
10 substance of that telephone call, Vera gives a little bit  
11 about that. It was a phone call which appeared as someone  
12 trying to make a date or have a conversation and try to see  
13 a woman again.

14 If you were looking to hide and you were  
15 looking to secrete yourself, would have you a 15 minute  
16 long conversation with a woman?

17 I submit to you that that conversation in and  
18 of itself shows you that there was a relationship between  
19 Vera and Mr. Colon.

20 Now, bear in mind, I don't need to prove  
21 anything. I don't need to show you anything, but it  
22 doesn't make sense.

23 If it doesn't make sense and the pieces don't  
24 fit together, it's at this point that the government is  
25 held to the burden and you must test the reasonable doubt,

## - Closing Arguments -

874

1 because they haven't proven their case beyond a reasonable  
2 doubt.

3 The People also introduced a rather impressive  
4 array of evidence. You've got large post boards with  
5 pictures. You've got bags that were sealed. You're got  
6 scientific tests. You've got records, phone records,  
7 hospital records, blanket, maps.

8 It's all in support and based upon Vera's  
9 testimony. Without Vera, none of those things would have  
10 entered in support. You have to believe her beyond a  
11 reasonable doubt to get to the other stuff.

12 I submit to you, you can't.

13 Now, you're also going to say there's a lot of  
14 evidence. Remember what we talked about at the beginning.  
15 It's not the quantity. It's the quality, the quality of  
16 the evidence, and I'm not telling you that the criminalist  
17 that came in here didn't give you quality work.

18 It's what her work is based upon that is the  
19 issue. All it shows you is that Dennis Colon was there,  
20 and I submit to you, that's not in dispute. It's in  
21 agreement, but this is not a case where it matters. It's  
22 used to prove that he was there. All right. He was there.  
23 You've got to rely upon who started the ball rolling

24 You also heard a little bit that when the  
25 police came to Dennis Colon and they interviewed him that

## - Closing Arguments -

875

1 he consented to everything they asked him. He cooperated  
2 every step of the way.

3 He consented to the search of his apartment.

4 He consented to them obtaining DNA from him on that day.

5 He consented to speak with Detective Harvin. It all goes  
6 in line with making a phone call a few days later, having a  
7 conversation, leaving DNA.

8 You're going to hear from Ms. Channapati, the  
9 government, and I submit to you that she's going to replay  
10 to you a significant portion of the evidence. If you  
11 couldn't rely on the evidence the first time you heard it  
12 and it wasn't sufficient, you can't rely upon it and it's  
13 not sufficient a second time.

14 Remember, she's going to replay for you or  
15 inform you of things without cross examination. I told you  
16 when we started this case that at some point it would end  
17 and we're here.

18 You, individually and collectively, gave the  
19 Court certain promises, and I told you that at some point I  
20 was going to ask you to find Dennis Colon not guilty of all  
21 the charges presented to you.

22 The Judge is going to submit a number of  
23 charges to you. In those charges there are elements, what  
24 makes up a charge. You must bear in mind that the  
25 government has to prove each and every element of each and

- Closing Arguments -

876

1 every crime for Mr. Colon to be found guilty of that  
2 specific crime.

3 I submit to you when you evaluate the evidence  
4 and you base it on what you heard and the fact that Vera  
5 Krioutchkova cannot be found credible that you will find  
6 Dennis Colon not guilty of each and every charge submitted  
7 to you.

8 I thank you for your time, your energy, and  
9 your attention.

10 THE COURT: Now, the People.

11 Thank you, defense.

12 MS. CHANNAPATI: Good afternoon.

13 On the March 26th, 2003, around 7:45 a.m. Vera  
14 Krioutchkova was in her apartment at 1711 East 15th Street,  
15 Apartment 1-A, in Brooklyn saying goodbye to her daughter  
16 and her granddaughter who were going off to school.

17 Ms. Krioutchkova was getting ready for a  
18 doctor's appointment and her phone rang at 8:01 a.m. and  
19 the person who called was the defendant, Dennis Colon.

20 The defendant asked her if she was Vera  
21 Krioutchkova, and she said, Yes.

22 He then asked, Do you have a problem with the  
23 leak, and she said, Yes.

24 Ms. Krioutchkova had been having a lot of  
25 problems with her apartment at that point and had told the

## - Closing Arguments -

877

1 landlord and business partners, two guys both named Guy,  
2 about these problems, and we can see the problems in her  
3 apartment. You can see the leak. You can see where the  
4 tiles are coming out, because that is a leak in her  
5 apartment, and she circled all the places where there were  
6 problems in the apartment. You can see how the water had  
7 caused stains so badly in her bathtub. In fact, you can  
8 see that the pictures were taken the day of the incident  
9 and that there was a leak in her apartment.

10 Now, the defendant said, I'm a plumber. Guy  
11 sent me to fix it. Vera told him that she had to go to the  
12 doctor. So he can't come now, but the defendant insisted  
13 he would come over now only to check it out and then come  
14 back later to fix it. So Ms. Krioutchkova agreed. She was  
15 happy to hear that the leak in her bathroom was going to be  
16 fixed.

17 Fresh from the shower, she had on her robe,  
18 and around five or ten minutes later she heard someone at  
19 the door. She went to the door, looked through the  
20 peephole, saw the defendant, a man she had never seen  
21 before. The defendant said to her, I'm the one who called.

22 Believing it was the plumber and that he had a  
23 legitimate reason to be in that apartment, Vera let the  
24 defendant in, and now the defendant was wearing a black  
25 leather jacket and a black hat. He wasn't wearing a bag or

## - Closing Arguments -

878

1 tool box, nothing else.

2 He was asking where was the problem. Vera  
3 showed him the leaks in the bathroom under the sink, the  
4 bathtub, and the ceiling, all in the hope it was going to  
5 get fixed.

6 The defendant asked for a pen and paper. He  
7 wrote one line of notes, she said, and told her he would  
8 come back later in the evening to repair and started  
9 walking towards the apartment exit.

10 When Ms. Krioutchkova followed him, as they  
11 got to the door, she looked up and saw the defendant was  
12 holding a knife and he said, "Lay down or I'll kill you.  
13 Lay down or I'll kill you."

14 Ladies and gentlemen, I submit to you this is  
15 the knife. This is the knife that she recognized. I'm  
16 showing it to you very quickly now. You can take all of  
17 this back in the jury room during your deliberation and  
18 take a look it very carefully, okay, and I suggest to you  
19 that you do that.

20 Now, at this point when she saw him with the  
21 knife, this is where the nightmare to end all nightmares  
22 began. Vera Krioutchkova tried to leave her apartment, but  
23 the defendant pushed her away from the door. He kept  
24 saying with the knife in his hand, "Lay down or I'll kill  
25 you. Lay down or I'll kill you."

## - Closing Arguments -

879

1                   She started screaming for him to get out and  
2 screaming for help. The defendant pushed her backwards  
3 into the bedroom. The whole time he had the knife in his  
4 hand pointing at her. "Lay down or I'll kill you. Lay  
5 down or I'll kill you."

6                   Ms. Krioutchkova begged for her life. Don't  
7 kill me. She said, Don't kill me. You can take whatever  
8 you want, but don't kill me.

9                   The defendant pushed her onto her daughter's  
10 bed, and that's when Krioutchkova realized that the  
11 defendant wasn't there to take anything. The defendant was  
12 there to rape her.

13                  She tried telling him that she was sick, and  
14 the defendant laughed. He put her arms behind her back,  
15 used his body weight to keep her on the bed; he spread her  
16 legs and forced his hands into her vagina, and Vera felt  
17 pain.

18                  She thought she would have a chance to escape  
19 if she asked him to wash his hands, but the defendant, when  
20 he went to wash his hands held her against the sink,  
21 between him and the sink, and washed his hands, took her  
22 back to the bedroom, unzipped his pants, pulled out his  
23 penis, and put his penis in her vagina and caused her to  
24 feel an excruciating searing pain and Vera feared for her  
25 life.

## - Closing Arguments -

880

The defendant then got up and told Vera to take a shower, don't call the police, and ran out of the apartment, but, again, Ms. Krioutchkova, she didn't listen, she didn't listen to him. That is why we're here today.

I submit to you, ladies and gentlemen, that these facts are not in dispute. There's nothing in evidence that contradicts these facts.

You heard the testimony directly from Ms. Krioutchkova, directly from her. You heard her respond to my questions on direct examination, and you heard her respond to the defense attorney's questions on cross examination, and still at the end of this testimony, there's nothing in evidence that contradicts the events as I have just laid them out. There's nothing in evidence that contradicts that.

Now, the defense attorney would have you believe that Ms. Krioutchkova is unreliable, that she's a flawed person, and cites the questions of her other litigation and civil lawsuits for her car accidents, not being able to answer those questions, and he maintains this is reason not to find her believable with regards to this case.

Just because, ladies and gentlemen, I submit to you, that she doesn't remember the details of those

## - Closing Arguments -

881

1 incidents doesn't mean that she doesn't remember the  
2 details of a rape.

3 The defense counsel would have you elevate a  
4 car accident to a rape. She does remember another  
5 traumatic event that happened to her -- her hysterectomy.  
6 She was able to testify as to the exact date that she had  
7 her hysterectomy, the exact date, and I submit to you that  
8 she's able to remember details of that, because it is  
9 another traumatic event in her life, just like this rape.

10 Now, the defense attorney also talked a little  
11 bit about the fact that there needs to be a connection  
12 between the defendant and the landlord, and he is  
13 speculating with you, ladies and gentlemen, I submit that  
14 he's speculating as to what the connection could be.

15 We don't know what the connection is. We  
16 talked about this. We don't know what the motive is, but  
17 the People's burden, the burden that the People have does  
18 not require us to prove the motive.

19 It's possible that because of this suit  
20 against the landlord this defendant was hired by the  
21 landlord to get rid of Vera from that apartment. It's  
22 absolutely possible.

23 MR. GREENBERG: Objection.

24 THE COURT: Overruled.

25 MS. CHANNAPATI: And the defense attorney also

## - Closing Arguments -

882

1 talked about her ire, that she was angry.

2 We were all here, ladies and gentlemen. We  
3 all saw her testify. She was not an angry vindictive  
4 woman. I submit to you this was not a woman who was bitter  
5 and angry. This was a woman who was a victim of a sexual  
6 assault.

7 Her psychiatric condition, ladies and  
8 gentlemen, she is depressed, and she told you why she was  
9 depressed. She's depressed, because she had cancer, and as  
10 a result of that cancer, she had a hysterectomy.

11 Being depressed, ladies and gentlemen, doesn't  
12 make you delusional. It makes you depressed, and  
13 everything she said that happened is corroborated, all that  
14 evidence. She's clearly not delusional, because there are  
15 things that don't come from her mouth that corroborate what  
16 happened that day, and I'll get into that in a minute.

17 The defense attorney is also talking about  
18 that there are gaps in the evidence. He's asking you to  
19 look for things that aren't there and focus your attention  
20 on what is not there so you will ignore everything that is  
21 there.

22 He's admitted what he can't deny, and he's  
23 denying what he can't admit. That second call could have  
24 been made from anywhere. It doesn't have to come from the  
25 defendant's apartment where he lived, and the knife, the

- Closing Arguments -

883

1 defense attorney said that she can't identify the knife.

2 Ladies and gentlemen, I ask you if you need to  
3 have your recollection refreshed, ask for a read back on  
4 cross examination by the defense attorney. She says, I  
5 recognize the knife, the blade, and I recognize a portion  
6 of the handle -- a knife that was found in the defendant's  
7 apartment.

8 I mean, is that a coincidence?

9 She recognizes the knife that was found in the  
10 defendant's apartment.

11 Getting hit in the face. The defense attorney  
12 brought that up, again, too. I submit to you, ask for a  
13 read back. She says that they were asking about marks on  
14 her body. She wasn't withholding or lying like the defense  
15 attorney was saying. Ask for a read back of the evidence  
16 if you need to hear it.

17 The different stories from police officers --  
18 you've heard the language issues. You've observed the  
19 language issues that she has, and it's possible, I submit  
20 to you, ladies and gentlemen, that the police officers only  
21 were able to get bits and pieces, because of that language  
22 barrier.

23 Now, with respect to the April 5th, 2003,  
24 telephone call, the defense attorney had suggested why in  
25 this day and age would someone call when we know there's

## - Closing Arguments -

884

1 phone records.

2 Ladies and gentlemen, the defendant's phone  
3 number was unlisted. It was unlisted. He never  
4 expected -- I submit to you he never expected for it to be  
5 traced back, because his phone number is unlisted.

6 We heard that testimony from the Verizon  
7 representative. It's not available for public access, and  
8 no one said that he had to be smart. I submit to you, by  
9 making that second phone call, he was acting out of a  
10 compulsion, a sick compulsion, to speak to the woman he  
11 attacked afterwards.

12 The defense attorney also said that all this  
13 evidence -- without Vera, none of this evidence would be  
14 here. Ladies and gentlemen, that's just not the case.  
15 Without the defendant, none of this evidence would be here.

16 It's not Vera's DNA. It's not Vera's DNA  
17 we're looking at. This isn't Vera's DNA that's in  
18 evidence. This is the defendant's DNA that's in evidence,  
19 and it's not the telephone calls that Vera made to the  
20 defendant. It's the phone calls that the defendant made to  
21 Vera.

22 It's the defendant who started the ball  
23 rolling. It's the defendant who started this when he  
24 called and said that he was the plumber, and as far as his  
25 cooperation with the police, ladies and gentlemen, I submit

## - Closing Arguments -

885

1 to you, again, not an intelligent man, because he honestly  
2 believed when he told Vera take a shower, because he knew,  
3 he knew that there's a possibility that DNA could be left  
4 over, he told her to take a shower, but he believed that  
5 she would actually do that and that's why he so confidently  
6 believed he could have gotten away with it. So he said he  
7 would take the swab.

8 Let's bring it back to Ms. Krioutchkova.

9 What do we know about her?

10 She's a 56 year old retired school teacher and  
11 medical assistant. She moved here from Russia and became  
12 an American citizen in 2001. She lives in that one bedroom  
13 apartment, photos are in evidence, with her daughter and  
14 granddaughter, and the apartment started falling apart in  
15 disrepair, such disrepair that the ceiling fell on her  
16 causing her injuries.

17 Ms. Krioutchkova is a woman who has chosen to  
18 exercise her rights, the rights that all Americans have --  
19 to hold responsible those people who are negligent and  
20 cause injuries, and I submit to you, who among us would not  
21 have done the exact same thing, and more importantly, even  
22 though she has these lawsuits against her landlord, Ms.  
23 Krioutchkova believed that the defendant is connected with  
24 the landlord based on what he told her.

25 She believes they are connected. Listen to

## - Closing Arguments -

886

1 the 911. She says in the 911, after she says it's the  
2 plumber, at one point she says, It was Guy. It was Guy.

3 So, of course, she wants to hold Guy  
4 responsible. Of course, she wants to hold Dennis Colon  
5 responsible, but how does the fact that she has a lawsuit  
6 pending change anything that Dennis Colon raped her? How  
7 does that change anything? What does one have to do with  
8 the other?

9 I submit to you, ladies and gentlemen, it has  
10 nothing to do with the other. That civil suit has nothing  
11 to do with this. This is the penal code. It has all the  
12 laws for New York State in here, and defense counsel is  
13 asking you to believe that because she, Vera Krioutchkova,  
14 has filed these civil lawsuits and because she's a woman  
15 who is depressed, that she doesn't deserve the protection  
16 of these laws, in fact, that she's below the law, and by  
17 putting Vera Krioutchkova below the law, in that way he's  
18 asking you to put the defendant above the law, that these  
19 laws don't apply to the defendant, because Vera  
20 Krioutchkova filed a civil lawsuit.

21 Now, we know that Ms. Krioutchkova suffered  
22 from cancer, that she had to have a hysterectomy, and that  
23 her depression from that became debilitating, and we know  
24 that it was so debilitating and it so affected her so  
25 severely, because she was able to testify to the exact date

## - Closing Arguments -

887

1 of her hysterectomy.

2 I submit to you, Ms. Krioutchkova is credible.  
3 You saw her. You heard her words. You saw her demeanor --  
4 all the things we talked about in jury selection when you  
5 were selected as jurors.

6 How about how would you determine whether  
7 someone was credible, the common sense ways you would  
8 decide whether someone was telling the truth. You can  
9 apply that to Ms. Krioutchkova, and I submit to you that  
10 she's someone who is believable, and if the defense  
11 attorney wants to hold it against her that she's a woman  
12 who suffered from depression and that somehow makes her  
13 less believable or less worthy of your belief, I submit to  
14 you that's not right. That's not right.

15 You heard her the day she was the attacked.  
16 You her heard her voice and the fear in her voice in the  
17 911 call. I submit to you, the voice that you hear was the  
18 sound of a woman who was in fear of her life, just as she  
19 told you on the witness stand, and at one point you have to  
20 think what woman would voluntarily submit herself to all of  
21 this -- dealing with the police, going to the hospital  
22 emergency room, having hairs plucked from her head, swabs  
23 from every orifice of her body, combing for pubic hair, and  
24 testifying and exposing herself in front of strangers.

25 What woman would subject herself to that

## - Closing Arguments -

888

1 voluntarily?

2 We also discussed during jury selection  
3 whether you could convict the defendant based upon the  
4 testimony of one eyewitness, the complainant, and you were  
5 all selected as jurors, because you said that you could and  
6 that you could follow the law and the Judge's instruction.

7 We have a lot more than her testimony. We  
8 have a lot more. You heard the expert testimony of Kyra  
9 Keblish from the Medical Examiner's office. She explained  
10 how the defendant's DNA was found on the anal swab and the  
11 duvet, the comforter holder, in the apartment. She told  
12 you that the likelihood of someone other than the defendant  
13 matching the DNA found in Vera is one in a trillion.

14 As Ms. Keblish explained, the earth's  
15 population is six billion. If you looked at 160 earths,  
16 you would still only find the defendant's DNA profile, only  
17 one, and I submit to you from the DNA evidence we know two  
18 things -- that the defendant was in Vera's apartment and  
19 that he had sexual intercourse with her.

20 You also heard expert testimony from Alice  
21 Olosunde from the Coney Island Hospital. I submit to you  
22 Ms. Olosunde has vast experience in the area as an examiner  
23 and as a teacher of woman's health over 20 years and was  
24 qualified as an expert in this court in sexual assault  
25 forensic examination.

## - Closing Arguments -

889

1                   She told you she examined Vera the same day  
2                   she was attacked by the defendant. She told you that Vera  
3                   was in shock. She was tearful, that he was weeping, and  
4                   she was afraid, and she also observed that Vera had an  
5                   abnormal bruise in her vagina, the same place where Vera  
6                   had massive pain.

7                   I submit to you that that bruise and that pain  
8                   is a physical injury, and, please, listen carefully to the  
9                   charges, because physical injury is going to come up during  
10                  your deliberation.

11                  Ms. Olosunde told you that those vaginal  
12                  injuries are consistent with forcible vaginal sexual  
13                  intercourse. It's consistent with rape.

14                  I submit to you from the medical evidence we  
15                  know two more things -- that the sexual intercourse was  
16                  forcible, and as a result, Vera was physically injured.

17                  You heard testimony from Silvana Didonna, an  
18                  investigator from Verizon. She testified based upon the  
19                  phone records of the defendant and from Vera it shows that  
20                  the defendant called Vera twice, once when he said he was a  
21                  plumber and two weeks later when he told Vera he called her  
22                  to make sure she didn't say anything to anyone. The fact  
23                  that he called her before he went there and afterwards  
24                  shows that the defendant preyed on Ms. Krioutchkova.

25                  I submit to you one more thing from the

## - Closing Arguments -

890

1 records -- that the defendant knew exactly what he was  
2 doing when he called and showed up at Vera's apartment.

3 Whether the defendant knew the apartment's  
4 problems, because it was part of his job, whether he heard  
5 about her problems around the neighborhood or looked her up  
6 in the phone book or maybe was part of a setup between the  
7 landlord and Mr. Colon to get Vera out of the apartment, we  
8 don't know. We don't know the motive, and we may never  
9 know or understand, but I submit to you that it doesn't  
10 matter, because we know what he does. We know how he  
11 operates.

12 Remember, like I said during jury selection, I  
13 don't have to prove motive. I only have to prove that he  
14 raped Ms. Krioutchkova.

15 The defendant called Vera under the pretense  
16 that he was a plumber. He uses that rouse to gain access  
17 to her apartment. He calls her to confirm that she's not  
18 an English speaker and that is good, because that would  
19 make her someone less likely to go forward to the police.

20 He goes to her apartment. He walks around  
21 casing the apartment to make sure that she's the only one  
22 there. Again, no witnesses. She's the only person there,  
23 and he sees that she's an older Russian woman who doesn't  
24 speak much English, someone who he thinks would not go to  
25 the authorities, an older woman who would also be easy to

## - Closing Arguments -

891

1 physically subdue, someone who would be afraid of getting  
2 hurt, someone who would listen to what he told her to do,  
3 but the defendant, ladies and gentlemen, I submit to you,  
4 got cocky, because after it was all over, he had to call  
5 her again.

6 That compulsion was there, ladies and  
7 gentlemen. That sickness was there, and that was his fatal  
8 mistake, because it was that phone call that lead the  
9 police back to Dennis Colon.

10 Now, with respect to the charges you're  
11 going to hear, we talked in jury selection about what ideas  
12 you may have about the crime of burglary, and you also said  
13 you could follow the judge's instruction and apply the law  
14 to the facts, even if it differs with what you believe a  
15 burglary to be.

16 With that in mind, I submit to you, ladies and  
17 gentlemen, that although Vera may have initially let the  
18 defendant into her apartment, once he pulled out the knife,  
19 he clearly no longer had her permission to stay or remain  
20 in that apartment, and if you remember Vera's testimony,  
21 she told him over and over, Get out, Get out.

22 I submit to you that you can convict the  
23 defendant, Dennis Colon, beyond a reasonable doubt based on  
24 all the evidence and the evidence in this case.

25 It answers the basic questions that we should

- Closing Arguments -

892

1 all be asking in any case -- who, what, when, where, and  
2 how.

3 Who did this?

4 We know it's the defendant.

5 How do we know that?

6 Because Vera ID'd him in the lineup. That was  
7 done two weeks after the rape, and his DNA later came back  
8 matching what was found on the swab, the anal swab, and the  
9 duvet in Vera's apartment. So we know her identification  
10 was right.

11 What did he do?

12 We know that the defendant raped her.

13 How do we know that?

14 Because of the DNA. The DNA is his. DNA was  
15 found on Vera Krioutchkova's body, and we know that from  
16 the medical records there was an abnormal bruise found  
17 inside her vagina. So we know what happened.

18 When did it happen?

19 March 26th, 2003, between 8:01, maybe 8:03  
20 a.m. and 8:45 a.m. The testimony of the police officers as  
21 well as the phone records that are in evidence, and we know  
22 that from her, the 911 call, that happened in between, we  
23 know it happened in that time frame.

24 Where did it happen?

25 We know it happened in the apartment, because

## - Closing Arguments -

893

1                   his semen was found in the apartment. It was found on the  
2                   duvet in the apartment that was recovered by crime scene  
3                   and the police officers and then tested by the DNA lab.

4                   How did he do all this?

5                   We know, because he brought in a knife. He  
6                   brought in the knife. A knife that Vera recognized. The  
7                   knife was recovered in the defendant's apartment and a  
8                   knife that has a very distinct handle and a very distinct  
9                   blade.

10                  Ladies and gentlemen, the knife that was in  
11                  the defendant's apartment was shown to Vera Krioutchkova  
12                  and identified as a knife that he used to get into the  
13                  apartment, and how else did he do it?

14                  He did it by using the rouse of I'm coming to  
15                  fix your leak, a leak that we know that she has, and he  
16                  called her before. We have the phone records. The  
17                  knife and the leak in her apartment is how he did it.

18                  Each piece of evidence -- I know there was  
19                  a lot, and I appreciate your patience throughout the trial.  
20                  There was a lot to take in, but each piece of evidence is  
21                  like a puzzle. It's a puzzle, and when you put each piece  
22                  together, the picture that you see is that this defendant  
23                  raped Vera Krioutchkova on March 26th, 2003, and based  
24                  upon the evidence, I ask you to render the only just  
25                  verdict -- guilty beyond a reasonable doubt of all charges.

With that, I'm going to leave you with the words of Vera herself.

(Whereupon, People's Exhibit No. 8, the 911 call, was played for the jury.)

THE COURT: People, continue, please.

MS. CHANNAPATI: I know you've heard a lot of words from myself, the witnesses, from the defense attorney, even from the Judge, but there's one word, only one word that matters in this entire process after you hear the evidence, and it's the word that only you, the jury, the jurors can utter, the word that only you the jury can say that is the most important word of all and that is guilty.

Thank you.

THE COURT: Ladies and gentlemen, we have now come to the part of the trial where I will instruct you regarding the law. After I am finished giving you these instructions, you will retire to the jury room to reach a verdict.

These instructions now will be made in three parts -- the first is a general statement of the law which is applicable to all jury trials in criminal cases.

The second part is a statement of the law as it applies to this particular case. Finally, I'll advise you regarding the conduct of your deliberations.